



Coordinating Investigations and Sharing Anti-Doping Information and Evidence

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1. Introduction

- 1.1 Based on experience gained, evidence gathered, and lessons learned in the first ten years of its existence, it is WADA's firm view that, to succeed in the fight against doping in sport, and so to protect the rights of clean athletes everywhere, Anti-Doping Organizations need to move beyond drug-testing alone to develop additional ways of gathering, sharing and exploiting information and evidence about the supply to and use of prohibited substances and methods by athletes under their jurisdiction.
- 1.2 While drug-testing will always remain an important part of the anti-doping effort, it is not capable on its own of uncovering and establishing most of the anti-doping rule violations in the World Anti-Doping Code that Anti-Doping Organizations must investigate and pursue. In particular, while the violations of presence and use of prohibited substances and methods can be uncovered by laboratory analysis of urine and blood samples collected from athletes, other anti-doping rule violations such as possession or administration of or trafficking in prohibited substances or methods can only be effectively identified and pursued through the collection of 'non-analytical' anti-doping information and evidence.
- 1.3 This means new investigative methods and techniques have to be deployed, and new partnerships have to be forged, particularly between the sports movement and public authorities engaged in the broader fight against doping in society. These new partnerships will allow Anti-Doping Organizations to take advantage of the investigative powers of those public authorities, including search and seizure, surveillance, and compulsion of witness testimony under penalties of perjury. In many seminal anti-doping cases, very serious anti-doping rule violations were only uncovered because of the use of such powers by the public authorities:
- 1998 Tour de France: French customs officials and police conducted raids, found performance-enhancing drugs in the Festina team car, and made arrests.
 - 1998 FINA World Championships: Australian customs agents found doping substances in the baggage of Chinese swimmers entering the country to compete in the World Championships.
 - 2002 Salt Lake City Olympics: police confiscated blood transfusion material at the residence of the Austrian cross-country ski team.
 - 2003 BALCO: US law enforcement agents used non-compulsory techniques, such as Internet searches and garbage searches, followed by legally-sanctioned search and seizure operations, to

gather evidence of trafficking in doping substances by BALCO and its President, Victor Conte.

- 2004 Oil for Drug: using wire-taps, hidden cameras and listening devices, the NAS Carabinieri in Florence, directed by the public prosecutor in Rome, uncovered a conspiracy by doctors to steal EPO and other doping substances from hospitals for supply to both amateur and professional athletes. The doctors were arrested and charged with offences under Italy's criminal anti-doping legislation, along with an officer of the Italian Cycling Federation who was also involved in the conspiracy.
- 2005 Operation Gear Grinder: US Drug Enforcement Administration officers uncovered a number of Mexican pharmaceutical companies ostensibly manufacturing veterinarian products but also involved in the production and supply of steroids into the US for non-therapeutic human use.
- 2006 Operation Puerto: federal drug agents raided the premises of Doctor Eufemiano Fuentes in Madrid and seized steroids, hormones, EPO, bags of frozen blood and equipment for treating blood, as well as documents on doping procedures performed on athletes and lists of the names of top-level athletes who received blood transfusions.
- 2006 Turin Olympics: Italian police raided the rooms of Austrian skiers at the request of the IOC, finding syringes, blood bags, bottles of saline solution and other materials that the Torino state prosecutor concluded were being used for blood transfusions.
- In 2007, customs officials in Finland seized 11.8 million tablets of anabolic steroids and 24,800 vials of growth hormone that were en route from China to Russia.
- 2007 Operation Raw Deal: in a follow-up to Operation Gear Grinder, the US Drug Enforcement Administration uncovered an international underground distribution network for the illegal supply of steroids and growth hormones into the United States and other countries, including identifying 30+ Chinese companies that supplied the raw chemical materials to unlicensed laboratories based in the US and elsewhere. As part of the investigation, the DEA, the FBI and other US law enforcement bodies executed 143 search warrants, closed down more than 50 unlicensed laboratories, arrested 124 people, and seized \$6.5 million in cash. Law enforcement authorities in Denmark, Germany, Australia, Belgium, Sweden and Thailand also conducted related enforcement actions.

- 2009 Operation Centenario: The NAS Carabinieri used wiretapping and other forms of electronic surveillance to gather evidence of a pharmacist's illicit supply of doping substances to (and organization of blood transfusions for) professional athletes in Italy, including members of the professional cycling team Lampre, for whom the pharmacist acted as a trainer.
- 1.4 Anti-Doping Organizations can support these law enforcement efforts by providing information and expertise that assists in understanding and developing the available evidence. And these law enforcement efforts in turn can help Anti-Doping Organizations by uncovering reliable evidence for use in disciplinary proceedings against cheating athletes and coaches. Examples to date include the cases successfully brought by USADA against athletes Michelle Collins, Tim Montgomery and Chrystie Gaines, as well as coaches Trevor Graham and Remi Korchemny, using evidence uncovered by the BALCO investigation; the proceedings brought by the IOC and FIS against the Austrian skiers and/or their support personnel that the police caught with blood doping materials at the Turin Olympic Games; the NFL ban on Rodney Harrison for using human growth hormone, based on evidence uncovered by the District Attorney's investigation into Signature Pharmacy in Florida; the ban imposed on Australian cyclist Andrew Wyper in 2008 for attempted use of human growth hormone and EPO, based on information provided to ASADA by Australian customs officials; the ban imposed on Spanish cyclist Alexandro Valverde in 2010 for blood doping; and the ban imposed on American tennis player Wayne Odesnik in 2010 for possession of human growth hormone, again based on information from Australian customs officials that was supplied by ASADA to the International Tennis Federation.
- 1.5 There are therefore compelling reasons for Anti-Doping Organizations and public authorities engaged in the broader fight against drugs in society generally to establish relationships and protocols facilitating mutual cooperation, including in particular the sharing of expertise and information uncovered by their respective investigations that may be useful in enforcing national laws and regulations (in the case of public authorities) or anti-doping rules and regulations (in the case of Anti-Doping Organizations).
- 1.6 This is where the partnership between sports bodies and public authorities advanced by WADA comes into its own. Public authorities have always recognized the substantial public interest in fighting the scourge of drugs in society, because of the adverse impact that the use of drugs has on collective and individual health and safety. Indeed, it was that recognition that led governments to enter into a partnership with the sports movement in 1999, under the auspices of the World Anti-Doping Agency, to fight the use of drugs in sport. If that commitment can be given further practical effect by exploiting the

- investigative powers and resources of public authorities to assist the enforcement efforts of Anti-Doping Organizations, then even small Anti-Doping Organizations with relatively limited resources of their own will be able to enhance greatly the impact and effectiveness of their anti-doping programs.
- 1.7 WADA has led by example on this issue, entering into a cooperation agreement with Interpol (reproduced at [Appendix 1](#)) that reflects the desire of both parties to coordinate their anti-doping efforts within the framework of their respective mandates, to cooperate in activities of common interest, and in particular to facilitate the exchange of information and expertise between them in order to advance their respective anti-doping goals.
 - 1.8 This document is not a mandatory International Standard or Guideline. Rather it is intended to encourage and inspire Anti-Doping Organizations and their counterpart public authorities to develop national and international partnerships of their own, harnessing each other's expertise and powers to further and advance their respective anti-doping objectives. It seeks to assist them in that endeavor by identifying the core principles that WADA believes, based on experience to date, will be key to the success of such partnerships.
 - 1.9 Recognizing that public authorities are likely to be more comfortable cooperating and sharing information with other public bodies operating at the same national level, it is clear that National Anti-Doping Organizations (which are usually government agencies and/or carry out public functions) bear a special responsibility to build lines of communication with the relevant public authorities in their jurisdictions, for the benefit of the entire anti-doping movement. International Federations and other Anti-Doping Organizations can then look to the relevant National Anti-Doping Organizations to assist them in obtaining assistance from public authorities in those jurisdictions. But in jurisdictions where there is no National Anti-Doping Organization, the International Federations and other Anti-Doping Organizations (including Regional Anti-Doping Organizations and National Olympic Committees) must do everything in their power to build their own relationships directly with the relevant public authorities. Again, this document is intended to assist in that endeavor.
 - 1.10 It is important to recognize that Anti-Doping Organizations operate in a wide variety of political, economic and social environments, and therefore face a broad range of logistical and practical challenges in their pursuit of clean sport. WADA recognizes that not every suggestion identified in this document will be suitable for every Anti-Doping Organization: there is no one 'correct' model for the pursuit of 'non-analytical' anti-doping rule violations. Instead, Anti-Doping

Organizations are encouraged to identify those tools that will be most suitable and effective for them, bearing in mind their own particular circumstances.

- 1.11 Nor should this document be regarded as an exhaustive statement of the possibilities for cooperation between Anti-Doping Organizations and public authorities in the investigation of doping activities. To the contrary, Anti-Doping Organizations are encouraged to develop further models and protocols and, where they are found to be effective, to share them with WADA and other stakeholders, so that best practice can be continually updated and maintained.

2. The challenge

2A 'Non-analytical' anti-doping rule violations

- 2.1 Traditional anti-doping programs were based on three fundamental strands: education, research and drug-testing. In addition to education of athletes in order to prevent abuse of drugs in the first place, and scientific research designed to protect the health of athletes and to ensure that cheats can be caught, the comprehensive drug-testing of athletes, both in and out of competition, has historically been the primary means of fighting doping in sport.
- 2.2 Drug-testing must certainly continue, because the analytical evidence it produces is key to uncovering and proving two core violations in the World Anti-Doping Code, namely the presence of doping substances in an athlete's sample (Code Article 2.1) and the use of doping substances and methods (Code Article 2.2).
- 2.3 However, the other anti-doping rule violations in the Code require proof of other facts that may not always be linked to (and indeed will sometimes be far removed from) the drug-testing process.
 - (a) In the course of drug-testing, evidence of various 'non-analytical' violations may be uncovered and pursued, including refusing or failing to submit to or otherwise evading sample collection (Article 2.3), failing to comply with whereabouts requirements (Article 2.4), and tampering or attempting to tamper with doping control (Article 2.5). However, the drug-testing process alone may not always generate sufficient evidence to support a charge under any one of those articles.
 - (b) Drug-testing is much less likely to uncover evidence of other anti-doping rule violations identified in the Code, such as possession of prohibited substances or methods (Article 2.6), trafficking in prohibited substances and methods (Article 2.7) or

administration of a prohibited substance or prohibited method to an athlete (Article 2.8).

- 2.4 Furthermore, even cases built primarily on analytical evidence – such as cases based on longitudinal studies developed as part of an Athlete Biological Passport program – may be supplemented with non-analytical evidence.
- 2.5 Therefore, alternative investigative techniques must be developed to assist in detecting and proving the wider range of violations under the Code. Some of the necessary techniques are already at the disposal of Anti-Doping Organizations (see [Appendix 2: Fighting 'Non-Analytical' Violations from within: Tools Available to the Sports Movement](#)), and Anti-Doping Organizations must be resourceful in applying these and developing other effective techniques. However, there are many other techniques that Anti-Doping Organizations cannot use themselves. Instead, to benefit from those techniques, they have to rely on the cooperation and support of public authorities (the police and other law enforcement agencies and regulatory bodies) involved in the fight against doping in society generally.

2B. Upstream perpetrators falling outside sport's jurisdiction

- 2.6 In addition, scandals such as the Festina affair in France (1998 Tour de France), BALCO in the United States (2003), Operation Puerto in Spain (2006), and Operation Raw Deal across the globe (2007), have demonstrated that it is not just the cheating athlete that must be the focus of the anti-doping fight, but also the 'upstream' perpetrators, i.e., the coaches, doctors and others (including other athletes) who supply prohibited substances to athletes or otherwise assist their cheating.
- 2.7 Those 'upstream' perpetrators can commit Code violations themselves, including trafficking (Article 2.7), possession (Article 2.6), tampering (Article 2.5) and administration of prohibited substances and/or prohibited methods (Article 2.8). These are very serious violations for which Article 10 prescribes severe sanctions, ranging up to a life-time ban for a first offence. However, the deterrent effect of such sanctions may be limited if the offender does not depend on involvement in sport for his/her livelihood.
- 2.8 In addition, as made clear by reports such as Alessandro Donati's *World Traffic in Doping Substances* (February 2007, available for download from WADA's website), doping substances are manufactured on a massive, global scale and distributed to athletes by individuals (many with links to organized crime) who fall far outside the jurisdiction of Anti-Doping Organizations. Anti-Doping Organizations are powerless to investigate and act against such persons and instead

rely entirely on the cooperation and support of the police and other law enforcement authorities to stop the activities that lead to the flow of doping substances and methods into sport.

- 2.9 At the same time, the public interest in active involvement by public authorities in the fight against doping in sport appears clear. The evidence (including the Donati Report mentioned above) indicates widespread misuse of (often counterfeit) medicinal substances on an uncontrolled basis for non-therapeutic reasons (including performance enhancement but also image enhancement and/or anti-aging purposes), with organized crime involved in trafficking of such substances, including via the Internet, creating clear risks to public health and safety, particularly among the young.
- 2.10 As first WADA President Richard Pound stated in March 2007:

The 'upstream' organizers of doping on a broad scale, including traffickers and members of the athlete entourage, must be held accountable. They are well-organized and well-financed individuals and groups who prey on athletes and youth and who profit from cheating while risking very little themselves. There is a necessary and inevitable evolution underway in the global fight against doping in sport, expanding beyond the traditional model that targets athletes through testing, research and education. It requires a more unified and cooperative action among law enforcement and anti-doping agencies to shut down source and supply.

3. Harnessing the powers of public authorities in the fight against doping in sport

- 3.1 A good example of how the anti-doping effort is maximized when Anti-Doping Organizations work in partnership with the public authorities comes from the 2006 Turin Olympics:

Case Study #1: WADA/IOC/Italian Carabinieri cooperation at the 2006 Turin Olympics

During drug-testing of Austrian skiers conducted in the run-up to the 2006 Torino Olympic Winter Games, doping control officers noticed suspicious material that could be used for blood doping. WADA reported this to the IOC and to the Italian law enforcement authorities. Separately, reports were received that Mr Walter Mayer, who had been sanctioned at the 2002 Olympic Winter Games for doping practices including blood doping, had been seen in and around the accommodation of certain Austrian skiers at the 2006 Games.

As a result of this coordination of intelligence-gathering between WADA, the IOC and the Italian authorities, the IOC conducted target testing and on 18 February 2006 the Italian Carabinieri entered and searched the accommodation of certain Austrian cross-country skiers and biathletes and support personnel at San Sicario and Pragelato in Italy. During the searches, they discovered and seized numerous materials and substances, including saline solutions, hCG, albumin, syringes, butterfly needles, intravenous tubes, blood bags, and devices for the testing of haemoglobin levels and blood typing.

The Torino Public Prosecutor's Office analysed the items seized and concluded in a written report that these items were evidence of blood doping practices.

Based on these findings and official reports of the police, the IOC, the FIS (Fédération Internationale de Ski), and the Austrian Olympic Committee initiated disciplinary proceedings against the athletes and athlete support personnel involved. The items seized by the Carabinieri were essential evidence in those proceedings, key to the sanctions secured by the sports bodies against the athletes and their support personnel.

The successful results of this coordinated approach show that a close cooperation between the sport authorities and the public authorities is essential for action to be taken quickly and effectively. Indeed, had the information not been shared between the different authorities, there would probably not have been sufficient conviction that a suspicious and unauthorized doping activity was taking place in these private accommodations for effective action to be taken.

Cooperation and sharing of the outcome of any action is essential as well. The evidence collected by the Italian police at the 2006 Games was shared promptly with the sport authorities to allow them to open their own disciplinary procedures and take the decisions that were within their own competence.

The evidence seized in Pragelateo and San Sicario has also triggered a separate criminal procedure against certain persons, based on Italian criminal law.

- 3.2 To date, however, not all governments have put in place the national anti-trafficking laws that are a prerequisite to the kind of concerted and coordinated action at a national level and an international level that is required to stop large-scale trafficking in doping agents. This gap has to be filled.

- 3.3 Furthermore, the national laws have to be backed by adequate enforcement resources and penalties, and the sports movement has to work with the public authorities to generate sufficient political momentum, so that law enforcement and regulatory agencies are incentivized to enforce the national laws with appropriate resource and conviction.

3A. Ensuring appropriate national anti-doping laws exist

- 3.4 The conduct that the anti-doping movement wants public authorities to investigate is the trafficking, possession and/or administration (for non-therapeutic purposes) of doping substances, including at a minimum anabolic steroids, growth hormones, and blood-doping agents such as erythropoietin (or 'EPO').
- 3.5 To trigger the jurisdiction of the state, however, and to bring into play its powers of investigation and punishment, that conduct must constitute an offence not only under the rules of the sport, but also under the laws of the land.
- 3.6 Currently, however, there is great inconsistency from one country to the next in the legal treatment of the production, supply and distribution of doping substances. For example, while some countries have proscribed the distribution of doping substances by reference to the Prohibited List, in others no such proscription exists. In such countries, it may be completely legal to manufacture and supply substances such as anabolic steroids, growth hormones and EPO for non-therapeutic purposes. Public authorities in these countries therefore do not have the jurisdiction to investigate such activities.
- 3.7 The lack of appropriate national laws does not just affect that nation. It also undermines the global effort to stem trafficking in doping substances, because it is from such countries that traffickers source and distribute doping substances across the globe. Indeed, back in 2000, the Deputies of the Ministers of the Council of Europe stressed that *'the ineffectiveness of the fight against suppliers of banned substances is due in part to the lack of international co-ordination in this field'*. They therefore recommended that the governments of Member States *'adopt suitable legislation and/or effectively apply existing legislation to deter and punish (by means that may include imprisonment) individuals and legal persons involved in the production, manufacture, transport, import, export, storage, offer, supply or any other form of trafficking in doping agents'*.

Each government must ensure that its laws and regulations make illegal the production, supply and distribution of prohibited substances for non-therapeutic purposes. They must give law enforcement and related public authorities the framework and tools needed to crack down on such activities.

- 3.8 By subsequently signing the World Anti-Doping Code, governments made a clear commitment to take measures to support the anti-doping effort in relation to the availability of doping substances and methods. Specifically, in Code Article 22.4 governments commit to bringing all governmental involvement with anti-doping into harmony with the Code, and in Code Article 22.1 they commit to taking all actions and measures necessary to comply with the UNESCO International Convention against Doping in Sport (which came into formal effect on 1 February 2007).
- 3.9 The UNESCO Convention formalizes the responsibilities of governments in the fight against trafficking of doping substances, and provides a clear basis for the harmonization of national laws against the manufacture, trafficking and possession of doping substances:
- (a) Under Article 4.1, State Parties to the Convention *'commit themselves to the principles of the Code'* as the basis for appropriate measures to be taken at national level, including *'legislation, regulation, policies or administrative practices'*, to abide by their obligations under the Convention.
 - (b) Under Article 8.1, State Parties accept an obligation to *'adopt measures to restrict the availability of prohibited substances and methods in order to restrict their use in sport by athletes, unless the use is based upon a therapeutic use exemption. These include measures against trafficking to athletes, and to this end, measures to control production, movement, importation, distribution and sale.'*
- 3.10 In terms of what the national laws should cover, as a starting-point WADA commends to its government stakeholders *Recommendation Rec (2000) 16 of the Committee of Ministers of the Council of Europe to member states on common core principles to be introduced into national legislation to combat the traffic in doping agents*, which is reproduced at Appendix 3 to this document.

3B. Ensuring that national anti-trafficking laws encompass all of the relevant doping substances

- 3.11 Even where relevant national laws exist, however, they will not necessarily encompass all of the doping substances covered by the Prohibited List. For example, while most national systems will proscribe the sale or supply of anabolic steroids for non-therapeutic use, not all of them similarly proscribe sale or supply of growth hormones or EPO. In such circumstances, Anti-Doping Organizations should consider enlisting the support of public health authorities to get

the missing doping substances brought within the ambit of the national law proscriptions. This was done successfully recently in the United Kingdom:

Case Study # 2: Engaging with legislators in the UK to fill the gaps in protection under national law

The main pieces of UK legislation proscribing/restricting the supply and use of drugs are the Misuse of Drugs Act and the Medicines Act. But several substances that are on WADA's Prohibited List were not covered by either statute. The UK NADO therefore engaged in a consultation with the public body responsible for updating the legislation (the Advisory Committee on the Misuse of Drugs, or ACMD), and established that it was open to the missing substances being added to one or other of the statutes, provided that there was evidence that the misuse of such substances was sufficiently widespread to amount to a public health issue. The UK NADO was able to provide evidence that, in combination with research that the ACMD had already conducted (including evidence arising out of needle exchange programmes), indicated widespread misuse of the substances in question among the gym fraternity, under-16s, and others. As a result, several anabolic steroids as well as human growth hormone were made subject to the proscriptions set out in the Misuse of Drugs Act, while EPO was made subject to regulation under the Medicines Act. Consequently, misuse of such substances is now not just a sports-related issue but also a criminal and/or a regulatory offence under UK domestic legislation.

- 3.12 Anti-Doping Organizations should also ensure that they have a process in place to identify each year whether changes made during the annual review of WADA's Prohibited List necessitate amendments to the national laws and regulations in their jurisdictions.
- 3.13 Furthermore, given the continuing creation and use of 'designer' drugs, it is also important to ensure, where possible, that the national laws and regulations proscribe the sale and supply not only of the steroids and other substances identified by name on the Prohibited List but also of all 'related substances', i.e., substances with a similar chemical structure and/or similar biological effect(s) to the substances named on the Prohibited List. For example, in the US, a bill to amend the Controlled Substances Act provides that '*[a] drug or hormonal substance (other than estrogens, progestins and corticosteroids) that is derived from or has a chemical structure substantially similar to one or more anabolic steroids listed, shall be considered to be an anabolic steroid for purposes of this Act if (i) the drug or substance has been created or manufactured with the intent of producing a drug or other substance that either (I) promotes muscle growth; or (II) otherwise causes a pharmacological effect similar to that of testosterone; or (ii) the drug or substance has been, or is intended to be, marketed or otherwise promoted in any manner suggesting that consuming it will promote muscle growth or any other pharmacological effect similar to that of testosterone.*'

3C Incentivizing robust enforcement of national laws and regulations

- 3.14 Even where there are national laws in place that proscribe trafficking in doping substances, enforcement of those laws may be a low priority for public authorities, either because the penalties imposed by law on offenders are weak, or because there is a perceived lack of public interest in devoting significant resources to enforcement, or both.
- 3.15 At a time when there are many conflicting demands on the resources available to fight crime and trafficking in drugs generally, it is up to the anti-doping movement to demonstrate why priority should be given to fighting trafficking in doping substances used in sport. An example from the United Kingdom again illustrates what can be achieved:

Case Study # 3: Getting drugs in sport onto the public policy agenda

The announcement that London would be the venue for the 2012 Olympic Summer Games gave the UK anti-doping authorities a strong 'hook' to engage the relevant Government ministers (the Minister for Sport and the Home Office Minister for Harm Reduction) in the fight against drugs in sport. Those Ministers agreed that the problem of doping in sport had to be given sufficient priority on the public policy agenda to minimize the risk that the Games would be blighted by doping scandals. In particular, a statement on the importance of fighting drugs in sport was included in the Home Office's 10-Year Drugs Strategy document, which the relevant law enforcement agencies (including the Borders Agency) were then able to point to when arguing for resources to be allocated to their efforts to assist anti-doping authorities in their efforts to stamp out drugs in sport. Prioritisation of this topic in the public policy agenda also helped the anti-doping authorities to get the right law enforcement people around the table to advise how to establish and organise the new public body that became UK Anti-Doping, the new UK NADO, including advice on ring-fencing the intelligence function of the new body, adopting the National Intelligence Model for collating and processing intelligence about doping in sport, protecting sources, dealing with the media, and so on.

- 3.16 The need for public authorities to prioritize the fight against trafficking in doping substances should not be in question. First, there is the threat to public health, both through young athletes in gyms and schools using steroids in an effort to emulate their heroes, and through the availability of counterfeit products, often produced with toxic ingredients and containing doses so large they endanger the health of the user. Second, studies such as the Donati Report (see above, paragraph 2.8) show that the trafficking of doping substances is often linked with organized crime and its sophisticated distribution networks, because it is seen as a particularly high-profit/low-risk business. The

challenge for Anti-Doping Organizations is to develop and marshal the evidence, and mobilize public opinion, so that public authorities are persuaded that doping in sport is a much bigger issue than just cheating by elite athletes, and that it implicates an upstream supply chain whose activities are highly injurious to society at large.

Penalties for trafficking of doping substances must be of a realistic order (including prison) to deter wrongdoers and to ensure law enforcement agencies are significantly engaged in pursuing offenders.

- 3.17 In addition, the same evidence may also be relied upon to ensure that the penalties under national law for trafficking in doping substances are sufficiently meaningful to have a real deterrent effect. For example, USADA was able to use the publicity generated by the BALCO investigation to secure an increase in the penalties for violation of federal laws prohibiting distribution of steroids for non-therapeutic purposes:

Case Study #4: How BALCO led to the strengthening of the US federal sentencing guidelines for trafficking of anabolic steroids

The manufacturing, distribution and trafficking of illegal drugs has long been a felony in the United States. And the relevant laws on their face provide for harsh penalties for transgressors. For example, pre-BALCO, the maximum penalty for the offence of conspiracy to possess anabolic steroids with intent to distribute was five years imprisonment with a \$250,000 fine, the maximum penalty for introduction and delivery of misbranded drugs into interstate commerce with intent to defraud was three years imprisonment and a \$250,000 fine, and the maximum penalty for money-laundering was 20 years imprisonment and a \$500,000 fine. However, the reality was that pre-BALCO, due to a lack of awareness that anabolic steroids posed a real danger to society, defendants convicted of distributing anabolic steroids would receive only a fraction of the maximum allowable penalty.

The BALCO case raised America's awareness that anabolic steroids posed a real danger to society. And when the BALCO prosecutors announced that the weak sentencing guidelines for distributing performance-enhancing drugs had forced them to enter into plea agreements with the BALCO defendants involving only 3-4 month prison sentences, the U.S. Congress was forced to recognize that greater sanctions were required to deter the supply of such products to athletes. It therefore directed the Sentencing Commission, under emergency amendment authority, to *'consider amending the Federal sentencing guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use ...'*.

Consequently, in March 2006 the federal sentencing guidelines were amended to strengthen dramatically the criminal penalties for the manufacturing, distribution and trafficking of performance-enhancing drugs. Specifically, the amendments (i) brought penalties for anabolic steroids up to the level for other schedule III drugs; (ii) implemented a two-level enhancement for the distribution of an anabolic steroid with a masking agent; (iii) implemented a two-level enhancement for the distribution of an anabolic steroid to an athlete; and (iv) clarified that enhancements for defendants who abuse a position of trust would ordinarily apply to coaches who encourage their athletes to use an anabolic steroid.

As a result, would-be anabolic steroid manufacturers, distributors and traffickers now know that they face serious criminal penalties, including potentially lengthy prison terms, if they seek to supply their illicit products to US athletes.

3D. Removing legal obstacles to the sharing of information between public authorities and Anti-Doping Organizations

3.18 There may be legal obstacles, particularly under national data protection and confidentiality laws, that prevent public authorities sharing relevant information with Anti-Doping Organizations. Work is required to identify and overcome those obstacles. One option is to amend the relevant national laws and/or regulations to include express

authorization for public authorities to share relevant information with Anti-Doping Organizations. Short of that, there are usually exceptions in the relevant laws permitting proportionate information-sharing for legitimate purposes. Anti-Doping Organizations should work hard to ensure that the fight against doping in sport is recognized as such a purpose.

3.19 Once again, the Code provides the necessary framework for governments and Anti-Doping Organizations to work side by side in this area:

(a) Article 10.3.2 of the Code requires Anti-Doping Organizations to share evidence of illegal activity with public authorities:

'... significant violations of Article 2.7 (Trafficking) or 2.8 (Administration of Prohibited Substances or Prohibited Methods) ... which may also violate non-sporting laws and regulations shall be reported to the competent administrative, professional or judicial authorities.'

(b) The commentary to Code Article 10.3.2 states:

'Those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive. Since the authority of sports organizations is generally limited to Ineligibility for credentials, membership and other sports benefits, reporting Athlete Support Personnel to competent authorities is an important step in the deterrence of doping.'

(c) Meanwhile, Code Article 22.2 provides:

'Each government will encourage all of its public services or agencies to share information with Anti-Doping Organizations which would be useful in the fight against doping and where to do so would not otherwise be legally prohibited.'

3.20 And once again the UNESCO Convention builds on this framework, with Article 13 committing all State Party signatories to '*encourage cooperation between anti-doping organizations, public authorities and sports organizations within their jurisdiction and those within the jurisdiction of other States Parties, in order to achieve, at the international level, the purposes of this Convention.*' (Similarly, Article 3.1 of the Anti-Doping Convention of the Council of Europe requires parties to '*coordinate the policies and actions of their government departments and other public authorities concerned with combating doping in sport.*').

4. Building effective relationships between Anti-Doping Organizations and public authorities

- 4.1 Once appropriate national laws against trafficking in doping substances are in place, the key is to build on that foundation by establishing formal relationships between Anti-Doping Organizations and the public authorities engaged in the enforcement of those national laws, in order to facilitate full cooperation and coordination between them.
- 4.2 The basic distinction between the end-user on the one hand, and the 'upstream' manufacturers and suppliers on the other hand, is relevant in this context. End-users who are athletes are obviously of substantial interest to Anti-Doping Organizations charged with enforcing their sport's anti-doping rules. However, public authorities are likely to be more concerned with the manufacturer, the distributor or the seller (or, in the case of customs, the importer) of doping substances. Yet the link between these groups in the chain of supply of doping substances means that there are clear opportunities for mutual cooperation and assistance that will produce more effective investigations overall and benefits for both Anti-Doping Organizations and public authorities. Whereas public authorities may focus on breaking up trafficking rings, the information they collect during their investigations can be extremely valuable to sport, enabling Anti-Doping Organizations to follow up on anti-doping rule violations committed by athletes and their entourage who are subject to the jurisdiction of the sports authorities under the Code. And at the same time the expertise, experience and information developed by Anti-Doping Organizations in the sporting context may be of significant assistance to public authorities in their own work directed at the manufactures and distributors of doping substances.
- 4.3 The key therefore is to ensure that a framework is in place whereby each side can assist and support the other in achieving its anti-doping objectives. This primarily means a two-way sharing of experience and expertise, and above all a sharing of any information that may evidence the violation of applicable anti-doping sporting rules and/or laws of the land.

Government must facilitate collaboration between law enforcement and sports authorities in their investigative work, so that sport can sanction those within its jurisdiction who facilitate and profit from cheating, and law enforcement can benefit from sport's assistance in pursuing those who are trafficking in doping substances and methods.

4.4 The first step is building awareness and interaction:

- (a) In each country, Anti-Doping Organizations must identify the government departments and other public authorities who are concerned with the fight against doping, in sport and/or in society at large. This is unlikely to be confined to the Ministry of Sport in a particular country. Instead, it is likely to include criminal law enforcement (the police, the public prosecutor, the justice department), drug health regulators (pharmaceutical inspection, consumer protection), border/customs agencies, professional regulatory bodies (such as medical councils with authority over the rules of conduct of the medical profession), public health authorities, and veterinary services. In many cases, multiple agencies could be involved.

Case study # 5: Dr Anthony Galea – multi-agency cooperation across the US-Canada border

Dr Anthony Galea, a Toronto-based physician with a specialist sports medicine practice, was team doctor to the CFL's Toronto Argonauts and also treated a number of professional athletes in other sports. In late 2009, his secretary was caught by US Customs in Buffalo, New York, trying to bring human growth hormone and Actovegin into the US to treat Dr Galea's US athlete clients. Customs turned her over to the FBI, who searched the laptop she was carrying and found details of professional athletes based in the US – including from the MLB, the NFL and the PGA -- who were being treated by Dr Galea.

The investigation that followed also involved the Royal Canadian Mounted Police, as well as medical regulatory authorities on both sides of the border, with the Canadian regulatory authority investigating Dr Galea's import of hGH into Canada and his prescription of Actovegin, which was not licensed for use in Canada, and the US medical authorities investigating Dr Galea's practising medicine in the US without a licence and his import into the US of both hGH and Actovegin. The sports authorities, including the MLB, supported those agencies in their work, including assisting in identifying athletes who had been treated by Dr Galea. He was indicted in both the US and Canada in 2010.

- (b) Anti-Doping Organizations also need to consider what other public authorities might generate information that could be of relevance. For example, who is responsible in a given jurisdiction for protecting the public from counterfeit medicines? What information might they generate that could be of relevance? It will be important to determine the precise anti-doping roles and functions of each of the relevant agencies, and to ensure that they are all aware of the anti-doping agenda, are

conscious of the types of information that might be useful in the fight against doping in sport, and know whom they should contact within the relevant Anti-Doping Organization if they come across that type of information.

Case Study #6: Forensic Laboratories

During an investigation into potential criminal trafficking (for example, trafficking in cocaine or heroin), the police may conduct a search and find potential evidence in the form of unlabelled and unidentified raw substances. The police will pass the substances to a forensic laboratory for analysis, to determine their identity and provenance. If a substance is identified as cocaine or heroin, then the criminal investigation will proceed. But what happens if the substance is identified as a steroid or a growth hormone? Do the laboratories know that this information needs to be shared with the anti-doping authorities? *Anti-Doping Organizations* should establish links with law enforcement and their forensic laboratories to ensure they are aware of the sport rules prohibiting the use of such substances, so that they recognize the significance of evidence of the possible use of such substances in sport, and understand the need to bring that evidence to the attention of the *Anti-Doping Organization*.

- (c) To assist in this task, WADA will work with organizations such as the Council of Europe to develop a database of the relevant laws and regulations of different countries and of the different public authorities in those countries involved in the implementation and enforcement of those laws and regulations.
- 4.5 After an Anti-Doping Organization has identified the relevant public authorities, the key is to build relationships based on mutual trust and respect:
- (a) Anti-Doping Organizations must make formal contact with the relevant public authorities, to explain who they are and what their role is, and to demonstrate the clear public interest in cooperating with them in the effective enforcement of their anti-doping rules for sport. Only through face-to-face meetings – human contact – can the necessary trust and confidence be built.
 - (b) It is important to identify individuals within each of the relevant authorities who could act as point person on sports-related issues both internally and for purposes of coordinating with the relevant Anti-Doping Organizations. Regular meetings could be scheduled, to be attended by such individuals from the public authorities and suitable representatives of the Anti-Doping

Organizations, with a regularized agenda to discuss matters of mutual interest.

- (c) There must be a full exchange of desired outcomes and modes of operation. In particular, it must be made absolutely clear that from the outset that the Anti-Doping Organizations would expect and want the cooperation and coordination in question to be mutually beneficial, advancing the anti-doping objectives not just of the Anti-Doping Organizations but also of the public authorities:
- (i) In terms of assistance that may be offered by the sports movement to public authorities:
- As noted above, in accordance with Code Article 10.3.2, Anti-Doping Organizations are required to share evidence of trafficking and administration that they uncover during their investigations with the relevant public authorities, to allow investigation of potential violations of national laws and regulations.
 - Anti-Doping Organizations can act as consultants in investigations, advising on what particular doping substances may do, why they are banned, etc. They may be able to assist in identifying relevant connections between athlete users and third parties. They can even testify if necessary in criminal or regulatory proceedings.
 - A good example of the support that Anti-Doping Organizations can provide to public authorities comes from the BALCO investigation in the US, where USADA was able to assist the federal authorities in a number of different ways:

Case Study #7: cooperation between USADA and the federal authorities in the BALCO case

The relationship between USADA and United States federal law enforcement is based on principles of mutual benefit and trust. This relationship was forged during the federal BALCO investigation, which resulted in (1) criminal convictions for Victor Conte and Jim Valente (principals of BALCO), Patrick Arnold (the designer of THG), Trevor Graham (Marion Jones's coach, who was distributing THG and other prohibited substances), Remi Korchemny (Kelli White's coach), Tammy Thomas (a U.S. elite cyclist who received norboletone and lied about it to a grand jury), and Barry Bonds; as well as (2) USADA and other ADOs establishing anti-doping rule violations against more than 24 athletes and athlete support personnel, including the following Olympic medalists or World Champions: Trevor Graham, Remi Korchemny, Marion Jones, Tim Montgomery, Alvin Harrison, Calvin Harrison, Chryste Gaines, Kelli White, Michelle Collins, Dwain Chambers, Kevin Toth, John McEwen and Regina Jacobs.

The cooperation between USADA and the federal authorities was critical to the success achieved by both parties. USADA assisted the federal authorities generally in two broad categories: knowledge of sport, and knowledge of the practice and science of doping in sport. For example, (i) USADA worked with the UCLA laboratory to identify the designer steroid THG that was being manufactured by the BALCO conspirators, in order to characterize its structure definitively, and to establish its anabolic effects; (ii) USADA prepared relationship charts linking suspected athletes, coaches and trainers to each other, and to other athletes, coaches, trainers and clubs, which produced both witnesses and targets in the federal investigation; (iii) when witnesses came forward to USADA, USADA encouraged them also to meet with the federal investigators; (iv) USADA provided explanations of how, when, and why athletes use illegal performance-enhancing drugs (for example, when federal law enforcement officers found documents relating to epitestosterone in the BALCO trash, USADA explained how and why an athlete would take epitestosterone to mask the administration of exogenous testosterone); (v) USADA's Chief Science Officer, Dr. Larry Bowers, accompanied the federal agents in their search of the BALCO premises, and assisted by identifying the various chemical substances found in Victor Conte's storage locker and whether they were prohibited under federal criminal statutes and/or under sporting rules and regulations; (vi) USADA assisted the federal authorities in understanding the significance of various documents seized by the federal agents in the BALCO search, including various doping calendars, logs, and urine and blood test reports; and (vii) Dr. Bowers served as either an expert consultant or testifying expert witness for the prosecution in the government's BALCO cases, including testifying as a government expert witness in the Barry Bonds trial.

The efforts of the federal authorities have also been very beneficial to USADA in the prosecution of anti-doping rule violations. For example, (i) Victor Conte's doping files seized during the BALCO search helped USADA to identify athletes who had committed anti-doping rule violations, and to prove non-analytical anti-doping rule violations (the Michelle Collins case, based entirely on BALCO documents, was the first major 'non-analytical' case of its kind); (ii) federal agents provided important foundation testimony for the BALCO documents as USADA's witnesses in the Tim Montgomery and Chryste Gaines arbitrations before the Court of Arbitration for Sport; and (iii) in several cases (e.g., Marion Jones), the federal investigation resulted in athletes publicly admitting anti-doping rule violations, which allowed USADA to resolve its cases more efficiently.

(ii) In terms of the types of assistance that may be offered by public authorities to Anti-Doping Organizations:

- If the public authorities are able to share evidence of use of doping substances by athletes that is unearthed in their investigations (as happened, for example, in the IOC and FIS disciplinary proceedings arising out of the Italian authorities' work at the Turin Olympics – see Case Study #1 above), and even to allow their investigators to testify at the sport's disciplinary proceedings to authenticate the evidence they have provided (as happened in the USADA disciplinary proceedings arising out of the federal BALCO investigation -- see Case Study #7, above), then the results should be significant.
- Ideally, law enforcement agencies should be able to assist not only Anti-Doping Organizations in their own jurisdictions but also International Federations and other Anti-Doping Organizations active in other jurisdictions. (See Case Study #8, below).
- Other examples of information-sharing partnerships that would benefit the fight against doping in sport would include partnerships between Major Event Organizations and the public authorities of the country in which the relevant event is to take place (as in the case of the IOC and the Italian authorities in the Turin Olympics – see Case Study #1 above). Indeed, Major Event Organizations should consider making it a condition of bidding to host an event that the bidder ensures appropriate information-sharing protocols and understandings are in place between the relevant Anti-Doping Organizations and the relevant public authorities.

Case Study #8: Cooperation between the IAAF, the AFLD, and French customs

The IAAF received a tip-off that an elite French athlete was purchasing and using prohibited substances during a training trip to the US. The IAAF knew from the whereabouts information filed by the athlete when she and her husband/coach were due to return to France, and it shared that information with the AFLD (the French NADO), who in turn alerted the French customs authorities at Roissy Airport. The IAAF asked the AFLD to conduct an out-of-competition test on the athlete when she arrived at the airport.

French customs stopped the athlete and her husband/coach when they passed through customs control at the airport and found hGH, EPO and other prohibited substances in their possession. They were held in custody, during which time the AFLD collected the sample from the athlete requested by the IAAF, which subsequently tested positive for EPO. The French Athletics Federation charged the athlete with an adverse finding and she was eventually banned for two years.

Following the incident, the French criminal authorities have recently charged the husband/coach with importing illegal drugs, trafficking, and the attempted administration of prohibited substances to an athlete. The criminal case is currently before the juge d'instruction, who will decide shortly whether to refer the matter to the Tribunal Correctionnel.

- (d) There needs to be an agreement – which should be recorded in writing in the form of a Memorandum of Understanding between the Anti-Doping Organization and the relevant public authority – on the principles upon which the parties will cooperate with each other within the framework of their respective mandates, including identifying the process by which information requests from one party to the other are to be made, received, assessed and responded to; explaining what steps the receiving party must take to safeguard the confidentiality of the information in question; and setting out the restrictions on the receiving party's use of that information, including the extent to which prior notice to and consent of the disclosing party is required before the receiving party may disclose the information in question to a third party (for example, as part of disciplinary proceedings brought against that person).
- (e) The agreement should also encompass any requirements that either party may have as to the manner or form in which the information should be provided to them, to ensure that it is as useful as possible for their purposes. For example, in the *Valverde* case the Italian Carabinieri were able to arrange for the collection of a sample from the cyclist, and its storage and transportation to their forensic laboratory, in a manner that respected the requirements of the relevant WADA Standards, so that the UCI and WADA were able to rely on the results of the

laboratory's DNA analysis of that sample in the proceedings against Valverde before the Court of Arbitration for Sport. Similarly, public authorities may ask that their representatives be allowed to attend when Anti-Doping Organizations question an athlete, and/or that certain legal formalities are observed in the taking of the athlete's testimony, so that his/her evidence may be admissible in any subsequent criminal or regulatory proceedings.

- (f) The Anti-Doping Organization will have to show that it has addressed the risk of leaks or inadvertent disclosure of shared information, that it will be robust in resisting third party efforts to obtain sensitive information, and that it will not disclose such information to third parties unless legally compelled to do so. (One way of providing comfort on such issues would be to demonstrate the existence of internal policies and procedures for the use of confidential information, to which all of the Anti-Doping Organization's staff sign up. It would also be helpful to show that the Anti-Doping Organization's staff have been vetted/security-checked, and trained in the proper use of information).
- (g) The Anti-Doping Organization will also have to demonstrate that it is not conflicted in the roles it carries out, so that (for example) there is no risk of the information being leaked to an athlete or athlete support personnel.
- (h) By building up a strong and consistent track record of scrupulous compliance with all the conditions on information-sharing and use imposed by the public authority in question, Anti-Doping Organizations will be able to develop the relationships of trust and confidence on which the most effective forms of coordination and collaboration with those public authorities ultimately depend. (See Case Study #9, below).

Case Study #9: ASADA's information-sharing arrangements with public authorities

The success of the Australian Sports Anti-Doping Authority's investigations and intelligence function relies in large part in its ability to share information with government and law enforcement agencies. The ASADA Act and ASADA Regulations provide ASADA with the legal authority to share private information gathered as part of its functions; and its own status as public body means that other public authorities are permitted to share information with it in turn to assist in its investigations.

ASADA can share information gathered in a formal investigation with a variety of agencies, including the Australian Customs and Border Protection Service (Customs), Federal and State law enforcement agencies, the Therapeutic Goods Administration, foreign and international law enforcement bodies, domestic and foreign bodies responsible for the regulation of medical practitioners, and sporting bodies. ASADA has signed memoranda of understanding (MOUs) with some of these agencies to formalise these information-sharing arrangements. These MOUs provide detail around how information can be shared, stored and used by both agencies. The MOUs with law enforcement agencies and Customs also provide for the exchange of substances seized under warrant.

This information-sharing facility has proven crucial in a number of cases. For example, in May and July 2008 Customs intercepted two separate packages, each labelled 'Quality First Genital Herpes Ointment', which actually contained vials of nandrolone and testosterone. This information was included in the regular fortnightly report that Customs provide to ASADA, which includes details of all seizures of Performance Enhancing Drugs (PEDs) at the Australian border. The ASADA Intelligence team analysed the report and determined that the package had been addressed to a Rugby League athlete playing at a state level. The matter was then referred to the ASADA Investigations team and the athlete was interviewed. The athlete denied any knowledge and was unable to explain why these substances had been sent in his name to his address. ASADA investigators then made further enquiries with Customs, who conducted a more in-depth intelligence assessment and determined that the athlete had made three transfers of monies through an international money transfer provider to purchase PEDs from a known supplier in Thailand. Two of the fund transfers took place shortly before Customs intercepted the packages of nandrolone and testosterone. As the time-frame between the transfers and the seizures was short, a strong inference could be drawn that the transfer of funds was for the purchase of the PEDs.

Armed with this further information ASADA investigators interviewed the athlete for a second time. The athlete admitted making the transfers, but claimed he did so on behalf of a friend who had family in 'Asia'. The athlete then provided the details of this 'friend'. Direct ASADA contact with the 'friend' resulted in the athlete retracting this defence and stating he no longer wished to contest the case and would accept the two-year sanction which he faced for attempted use.

- 4.6 It will be particularly important to discuss and agree terms of use of shared information that ensure the information can be used as and when needed to achieve one party's objectives without compromising the other's objectives:
- (a) On the one hand, the integrity of criminal and regulatory investigations and enforcement proceedings is vital. Nothing must be done that might undermine their integrity or their effectiveness.
 - (b) On the other hand, there is a strong public interest in the speedy and effective enforcement of sport's anti-doping rules, to maintain public confidence in the ability of the sports movement to protect the integrity of the sport and of particular events within that sport.
 - (c) Any conflict between the two interests should be resolved on a case-by-case basis. Early and open discussion is required to identify the potential conflict and explore ways of resolving it to each party's satisfaction. Through discussion and mutual respect, it should be possible to find a way to further the public interest in the speedy and effective enforcement of sport's anti-doping rules without compromising any concurrent criminal/regulatory investigation.
 - (d) For example, if criminal investigation has uncovered strong evidence of doping by an elite-level athlete, there may be a compelling need to take speedy action in reliance on that evidence to protect the integrity of an upcoming Olympic Games or World Championship. In appropriate circumstances (for example, if the criminal investigation has been concluded and trial is awaited), it should be possible for the public authority in possession of the information to find a way to provide the evidence to the relevant Anti-Doping Organization on a timely basis and in usable form. For example, in the 2004 Oil for Drug investigation in Italy, the public prosecutor ordered the release of the file to the Italian National Anti-Doping Organization as soon as the criminal investigation was complete, and without waiting for the trial to take place, so that the Italian National Anti-Doping Organization could take appropriate and timely action to ban the perpetrators from any involvement in Italian sport. Similarly, the US federal authorities were able to provide relevant evidence to USADA about Olympic athletes mixed up in the BALCO investigation in sufficient time for USADA to prevent the participation of those athletes in the 2004 Olympic Games.

**Appendix 1: Memorandum of Understanding
between WADA and Interpol**

CO-OPERATION AGREEMENT

BETWEEN

**THE WORLD ANTI-DOPING AGENCY
(WADA)**

AND

**THE INTERNATIONAL CRIMINAL
POLICE ORGANIZATION
(ICPO-INTERPOL)**

Preamble

The World Anti-Doping Agency (hereinafter referred to as WADA)

And

The International Criminal Police Organization-INTERPOL (hereinafter Referred to as INTERPOL)

Wishing to co-ordinate their efforts within the framework of their respective mandates;

Recognizing that INTERPOL is responsible for ensuring and promoting the widest possible mutual assistance between all the criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights;

Recognizing that WADA is responsible for promoting and co-ordinating at international level the fight against doping in sport, including the promotion of harmonized rules, disciplinary procedures, sanctions and other means of combating doping in sport;

Recalling that the Anti-Doping Convention of 16 November 1989 and its Additional Protocol of 12 September 2002 adopted within the framework of the Council of Europe are the public international law tools which are at the origin of national anti-doping policies and of intergovernmental co-operation;

Noting the entering into force on 1 February 2007 of the UNESCO International Convention against Doping in Sport (hereinafter called "the UNESCO International Convention") unanimously approved on 19 October 2005 by 191 Member States, in order to promote and foster international co-operation between States Parties and leading organizations, in particular WADA, in the prevention of and the fight against doping in sport, with a view to its elimination;

Noting that the UNESCO International Convention formalizes governmental support for the World Anti-Doping Code adopted by WADA and supported by governments in the Copenhagen Declaration on Anti-Doping in Sport (March, 2003);

Noting that pursuant to Article 5 of the UNESCO International Convention it is within the States Parties' discretion to adopt appropriate measures to achieve the objectives of the said Convention, including legislation, policies or administrative practices;

Recognizing that some INTERPOL member countries had already adopted in their national criminal legislation measures to achieve these objectives in sport

and non-sport milieu as well, while further to the entry into force of the UNESCO International Convention, some others have either strengthened or adopted criminal laws on the subject matter;

Recognizing that the use of any prohibited substances or prohibited methods and the trafficking of prohibited substances or methods is not restricted to competitive sports, but largely covers millions of users, and hence is considered as a serious public health issue;

Recognizing the importance of fighting against doping and trafficking of doping substances, particularly when these relate to criminal groups which find thereby a way to make huge illegal profits;

Noting that some INTERPOL member countries have already provided the Organization with information regarding international rings' and criminal groups' involvement in doping activities;

Recognizing the need to foster and co-ordinate international police co-operation in the fight against doping and trafficking of doping substances, with a view to its elimination;

Recognizing that it is within INTERPOL's mandate to foster international police co-operation in the fight against doping and trafficking of doping substances to the extent that States Parties in abiding by the obligations contained in the UNESCO International Convention have chosen to adopt criminal laws on the subject matter;

Recognizing the mutual interest for both organizations in co-operating to better fight doping activities and trafficking of doping substances;

Have therefore agreed on the following;

Article 1
Purpose

The purpose of the present Co-operation Agreement is to establish a framework for co-operation between the Parties, within their respective mandates and subject to their respective rules and regulations, thus facilitating the exchange of information and expertise, along with the prevention and suppression of doping and trafficking in doping.

Article 2
Co-operation

1. INTERPOL and WADA shall co-operate in activities of common interest in the area of anti-doping within their respective mandates and with due respect for national laws, international law and the Parties' respective rules and regulations.
2. The purpose of the co-operation between INTERPOL and WADA is to support enforcement of national and international anti-doping measures referred to in the UNESCO International Convention with due respect for their respective mandates. The said support shall be limited to anti-doping measures that are directed towards the prevention and suppression of doping activities and trafficking of doping substances, when the latter constitute ordinary law crimes: However WADA and INTERPOL shall join their efforts to encourage the implementation of relevant legislation in all INTERPOL Member countries to enable police officers to efficiently fight against the trafficking of doping substances.
3. INTERPOL, through its National Central Bureaus shall liaise with the national authorities competent in the area of anti-doping and trafficking of doping substances. WADA shall encourage national authorities competent in the area of anti-doping and trafficking of doping substances to liaise with INTERPOL's General Secretariat via INTERPOL's National Central Bureaus.
4. INTERPOL and WADA shall co-operate in the collection, storage and exchange of information, in compliance with the applicable rules as laid down in Article 4 (2).
5. INTERPOL and WADA shall co-operate in the set-up of information sessions and seminars to raise awareness about the issue of trafficking of doping substances.
6. Each party shall assist the other in the development of alerts on trends observed in the field of doping and trafficking of doping substances.

Article 3
Representation

1. Subject to existing internal rules and regulations, representatives of each party will be invited to participate as observers in meetings of the other party at which matters of common interest are to be examined.
2. INTERPOL and WADA shall each designate a person to act as a point of contact with a view to ensuring the implementation of the provisions of the present Co-operation Agreement.

Article 4
Exchange of Information

1. Each party shall inform the other about the progress of work related to activities of common interest.
2. Subject to such restrictions and arrangements as may be considered necessary by either Party to preserve the confidential nature and security of certain information and documents, INTERPOL and WADA shall ensure full and prompt exchange of information and documents, in particular concerning typologies, trends and modus operandi in the field of doping and trafficking of doping substances. The said information is exchanged and processed exclusively for the purpose of this Agreement and on a need to know basis, with due respect for national laws, international law and each party's rules and regulations, in particular INTERPOL's Rules on the Processing of Information for the purposes of international police co-operation and the texts to which they refer.
3. When providing information, each Party shall ensure that such information is accurate, relevant and kept updated.
4. Prior to the use of any information obtained from INTERPOL, WADA must check with the INTERPOL's General Secretariat to ensure that the information is still accurate and relevant.
5. Information received in accordance with the present Agreement may not be transmitted to third parties without the prior consent of the providing Party.
6. Each Party shall take the appropriate measures to protect the information received from the other Party from unauthorized access or processing.

Article 5
Finance

1. The means of financing all activities of common interest will be jointly defined on a project-by-project basis between the parties.
2. To implement the co-operation as referred to in Article 2, WADA undertakes to use its best endeavour to secure appropriate funding for all costs relating to the dedication of an officer within the INTERPOL structure.

Article 6
Revisions and Termination

1. The provisions of the present agreement may be amended at any time upon written agreement between the parties.
2. Either party may terminate the present Agreement subject to three months notice in writing to the other party.

Article 7
Entry into Force

The present Agreement will enter into force at the latest 60 days after signing by the Secretary General of INTERPOL and the Chairman and the Director General of WADA.

In witness whereof, the Secretary General of INTERPOL and the Chairman and the Director General of WADA have signed the present co-operation agreement in two original copies, in English, on the dates appearing under their respective signatures.

Signed on 2 February 2009

Signed on 2 February 2009

**For the World Anti-Doping Agency
(WADA)**

**For the International Criminal
Police Organization (INTERPOL)**

David Howman
Director General

Ronald K. Noble
Secretary General

Appendix 2

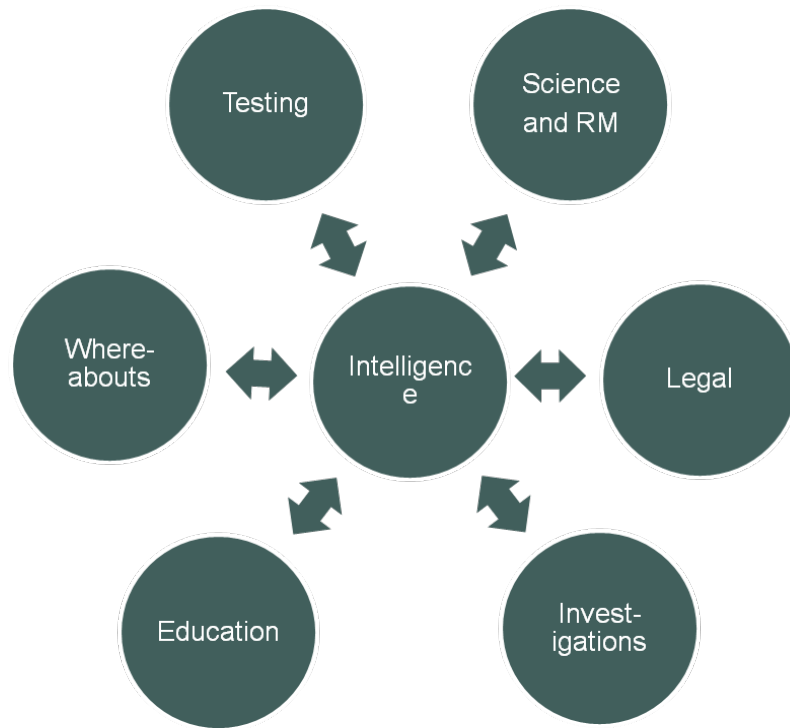
Fighting 'Non-Analytical' Violations from within: Tools Available to the Sports Movement

- A2.1 No one is suggesting that the sports movement should simply seek to pass responsibility for investigating 'non-analytical' anti-doping rule violations to the public authorities. Those who seek the help of others must first do everything they can to help themselves. And Code Article 20 makes it a specific responsibility of each International Federation, National Olympic Committee and National Anti-Doping Organization *'to vigorously pursue all potential anti-doping rule violations within its jurisdiction including investigation into whether Athlete Support Personnel or other Persons may have been involved in each case of doping.'*
- A2.2 Anti-Doping Organizations have various tools at their disposal to assist in unearthing and investigating evidence of 'non-analytical' violations. For example:
- (a) Code Article 6.2 permits the use of detailed individual athlete longitudinal profiling, using techniques such as DNA/genomic profiling. The UCI and the IAAF in particular have developed Athlete Passport programs that have led to anti-doping rule violations being established in circumstances that would not have been possible using only traditional techniques.
 - (b) Doping Control Officers, if properly trained, can gather helpful intelligence during the sample collection process. (See, e.g., Case Study #1, above, in relation to actions taken at the Turin Games by the IOC and the Italian police based on intelligence provided by DCOs conducting out-of-competition tests).
 - (c) And where the sample collection process has generated information indicating a possible refusal or failure to provide a sample, or a potential whereabouts violation, or possible tampering or attempted tampering, sports bodies can investigate the surrounding facts in much the same way as they currently investigate other apparent disciplinary breaches, including interviewing the athlete involved and any other potential witnesses. Where appropriate, rules can provide for sanctions for failure to co-operate with such investigations. (Such a rule might read as follows: *'Participants must cooperate fully with investigations conducted pursuant to this Article. If the Anti-Doping Manager believes that a Participant may have committed an Anti-Doping Rule Violation, the Anti-Doping Manager may make a written demand to such Participant (a "Demand") to furnish to the Anti-Doping Manager*

any information regarding the alleged Anti-Doping Rule Violation, including (without limitation) a written statement setting forth the facts and circumstances with respect to the alleged Anti-Doping Rule Violation. The Participant must furnish such information within seven (7) business days of the making of such Demand, or within such other time as may be set by the Anti-Doping Manager. Any information furnished to the Anti-Doping Manager shall be kept confidential except when it becomes necessary to disclose such information in furtherance of the prosecution of an Anti-Doping Rule Violation, or when such information is reported to administrative, professional, or judicial authorities pursuant to an investigation or prosecution of non-sporting laws or regulations. Each Participant waives and forfeits any rights, defences and privileges provided by any law in any jurisdiction to withhold information requested in a Demand. If a Participant fails to produce such information, then provided that the Review Board has agreed with the Anti-Doping Manager that there is a good faith basis for the Demand, the Participant's eligibility to compete in Covered Events (or, in the case of a Player Support Personnel, to assist Players competing in Covered Events) may be withdrawn, and he/she may be denied credentials and access to Covered Events, unless and until he/she complies with the Demand.').

- (d) Anti-Doping Organizations can develop relationships with athletes and coaches, who can be valuable sources of information about possible cheating. Similar information might be obtained by establishing an 'anti-doping hotline' that whistle-blowers may use.
- (e) Anti-Doping Organizations need to put the intelligence that they develop about the risks of doping by athletes under their jurisdiction at the heart of everything they do. (See Figure 1, below). In particular, they need to feed it into their test distribution planning, and so focus their drug-testing efforts in areas where they are most likely to turn up evidence of anti-doping rule violations.

Figure 1: The central role of intelligence in the new anti-doping model



- (f) In appropriate circumstances an Anti-Doping Organization can and should consider writing rules requiring athletes and athlete support personnel under its jurisdiction to submit to searches of their person and/or their premises. (Such a rule might read as follows: *'For the purposes of determining whether an athlete has in his/her possession any prohibited substance, the ADO and its authorized officers (a) may search any bags and possessions that the athlete brings to the training or event venue or has in his/her possession or control while participating in such training or event; and (b) may take and retain any substance it discovers as a result of such search that it believes or suspects to be a prohibited substance, and may have that substance analyzed to confirm or otherwise its belief/suspicion.'*).
- (g) Perhaps most importantly, Code Article 10.5.3 gives an Anti-Doping Organization the ability to offer an athlete a reduced sanction for his/her anti-doping rule violation if he/she provides assistance in discovering or establishing anti-doping rules violations by others:

'Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations.

An Anti-Doping Organization with results management responsibility for an anti-doping rule violation may ... suspend part of the period of Ineligibility imposed in an individual case where an Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or 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 a breach of professional rules by another Person. ... The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport. ...'

- (h) This can be a very useful tool. For example, it was the evidence of Kelli White that was the basis for the successful disciplinary proceedings brought by USADA against Michelle Collins, Tim Montgomery and Chrystie Gaines. In exchange for admitting her own offence and co-operating with the BALCO investigators, as well as giving truthful information concerning other anti-doping violations, White received a sanction of two years for her own offence, instead of the life-ban that was available under the IAAF rules.
- (i) It will be important to ensure that the Anti-Doping Organization with results management authority over an athlete has people with the necessary training and skills to debrief cooperating athletes fully and effectively so that all potentially useful intelligence is gathered.

A2.3 In addition to the foregoing, the sports movement must remain assiduous in developing further tools and mechanisms for investigating doping violations beyond the traditional drug-testing model. Just as is the case with the enforcement of most disciplinary rules and prohibitions outside the field of doping, so in the field of 'non-analytical violations' sports bodies must develop their own powers of inquiry and investigation, training their personnel in investigative techniques, in order to facilitate the gathering of information and evidence beyond the sample collection process itself. If they do all that is within their power to do, the sports bodies can then rightfully look to the public authorities to help them by doing what is outside the sports bodies' power to do.

Appendix 3

Recommendation Rec (2000) 16 of the Committee of Ministers to member states on common core principles to be introduced into national legislation to combat the traffic in doping agents

(Adopted by the Committee of Ministers on 13 September 2000 at the 720th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Bearing in mind the Resolution on 'the fight against doping' adopted at the 9th Conference of European Ministers responsible for Sport, in Bratislava in May 2000;

Recalling that Article 4 of the Anti-Doping Convention (ETS 135) stipulates that 'the Parties shall adopt, where appropriate, legislation, regulations or administrative measures to restrict the availability (including provisions to control movement, possession, importation, distribution and sale) as well as the use in sport of banned doping agents and doping methods and in particular anabolic steroids';

Recalling that, with reference to this article, the Monitoring Group adopted Recommendation (No.2/94) on measures to restrict the availability of anabolic steroids, which has influenced several countries' legislation in this field;

Considering that events in recent years have shown that the traffic in and use of doping agents is not restricted to anabolic steroids but extends also to other substances, such as erythropoietin and growth hormones;

Considering that a decisive factor in the fight against doping is political will on the part of the authorities to adopt and enforce in practice suitable legislation on seeking and identifying those responsible, especially those in control of networks producing and distributing doping agents, and that this task, which goes beyond the sole jurisdiction of ministers of sport, also concerns the police, customs and other authorities;

Aware that it is incumbent upon governments to enact laws and regulations which will harmonise bodies of national legislation on doping and the possession of and traffic in doping agents;

Recognising that the legislative measures must be backed up by effective co-ordination;

Considering the Clearing House study on Legislation and Regulations on Doping in 42 countries;

Considering that the ineffectiveness of the fight against suppliers of banned substances is due in part to the lack of international co-ordination in this field;

Considering that the Anti-Doping Convention and its associated recommendations (in particular Recommendation No.2/94 on measures to restrict the availability of anabolic steroids) constitute a common framework for the adoption and standardisation of national legislation on the production, movement and possession of doping agents,

1. Recommends that the Governments of the member states:

A. Sign and/or ratify the Anti-Doping Convention (ETS 135) if they have not already done so;

B. In applying the Convention, adopt suitable legislation and/or effectively apply existing legislation to deter and punish (by means that may include imprisonment) individuals and legal persons involved in the production, manufacture, transport, import, export, storage, offer, supply or any other form of traffic in doping agents. Such legislation should be based on the principles stated in the appendix to this recommendation.

2. Instructs the Secretary General to bring the Recommendation to the attention of the States Parties to the Convention and the observers which are not member states of the Council of Europe.

Appendix to Recommendation Rec (2000)16

Common core principles

1. The approach is not fundamentally different from that of laws against hard drugs. Governments should ensure, within the bounds of each country's system of law and administration, that the most appropriate and effective national means are used to combat the production, manufacture, transport, import, export, storage, offer, supply or any other form of traffic in doping agents. To do so, countries should review their legislation in the relevant areas of government responsibility with respect for doping agents, such as:

- criminal laws;

- laws and regulations on pharmaceutical products and medicines;

- customs laws and regulations;

- legislation on the protection of public health, etc;

- legislation for the protection of children;

- laws concerning professionals (esp. medical doctors, veterinary doctors, pharmacists and laboratory workers);

- any other relevant legal act...

2. Legislation should also target the act of prescribing, supplying, offering, administering or applying prohibited doping agents to athletes, that of facilitating their use and that of encouraging athletes in any way at all to use them. This can be achieved by national legislation for sport or by a suitable alternative regime for the governance of sport at a national level with binding anti-doping provisions.

3. There are a number of specific issues or problems which should be addressed by governments in the exercise of their responsibilities:

a. In cases of doping or non-sport use involving minors, and in order to reinforce their protection, there is a need for tougher sanctions for those who prescribe, supply, offer, administer or apply doping agents to them.

b. The adoption of such legislation would require a common definition of doping agents (and related substances). With a view to harmonising legislative measures in this field, all definitions should be based on those adopted by the Monitoring Group in the appendix to the Anti-Doping Convention.

c. Another major concern is that of improving information about medicines, and their effects as doping agents. A standard warning should be printed on medicine labels. It is also necessary to provide in national legislation that all contents of food or dietary supplements or vitamins, should be indicated on the packaging of these substances. This information should in particular specify whether the so-called dietary supplement contains a doping substance or a precursor of doping substance (for ex. a steroid and/or its precursors). The implications of Internet trade should be catered for.

d. Provision should be made in national legislation for the seizure and confiscation of illegal substances, and to address money laundering.

e. It would be prudent to extend the scope of legislative and administrative measures on the laundering of drug money to earnings derived from the trade in doping agents.

f. Additional legislative and administrative measures should be adopted to co-ordinate the activity of the police, customs and courts.

g. A system should be set up for pooling information on trafficking and traffickers in doping agents. Such a system could operate between countries on a bilateral basis or by means of existing international machinery.

h. In order to improve international effectiveness, measures should be taken as required to improve the compatibility of police and customs administrative procedures in countries party to the convention. International consciousness and co-operation should also be encouraged in international police and customs, organisations such as the world Customs Organisation and Interpol.

i. As the chemical complexity of doping agents does not always permit their identification by the police or customs, members of both police forces and customs services should receive adequate training.