



**Arbitration CAS 2010/A/2119 International Federation of Body Building and Fitness (IFBB)  
v. International World Games Association (IWGA), award of 19 November 2010**

Panel: Prof. Luigi Fumagalli (Italy), President; Mr. Michael Beloff, QC (United Kingdom); Mr Olivier Carrard (Switzerland)

*Body Building*

*Suspension of an IF from its participation to the World Games due to a “bad doping record”*

*“Bad doping record” of the IF as a basis for the suspension of an IF from the World Games*

*Failure of an IF to implement proper anti-doping policies and damage on the image of the IWGA*

*Presumption of consequences and evidence according to Swiss law*

*Limits of financial means as justification for inadequate number of out-of-competition controls by the IF*

*Proper announcement of the vote on suspension of an IF and violation of its right to be heard*

*Proportionality of the sanction of suspension of an IF from the World Games*

1. A “bad doping record” on the part of the IF as well as its inability to take serious measures to address doping can properly be considered as contrary to the interests of the IWGA causing adverse effects to the World Games and every one of these factors supplies a sufficient basis for the decision to suspend an IF from participation in the World Games. Rejection of the practice of doping is a constitutional principle of the IWGA, since doping contradicts the objectives of the IWGA, as defined in the IWGA Constitution.
2. The failure of an IF to implement proper anti-doping policies, as indicated by the anti-doping tests showing positive results during the past editions of the World Games, as well as by other anti-doping tests, affects in itself the image of the World Games, as it establishes that the member federation is not in a position to ensure compliance of its athletes with the relevant anti-doping regulations. Proof of damage to the IWGA image, arising out of such circumstances, does not need confirmation by specific evidence, as it is inherent in the exposure to the public of the “bad doping record” of one of its member federations at the World Games – organized by the IWGA.
3. Consequences, whose existence must be presumed to occur in the normal course of events, can supply the basis of a judgment, even if not established by particular evidence, where the party who puts them in issue does not itself provide material which puts their existence in doubt. In light of this adjectival legal principle, the failure of the IF to implement proper anti-doping policies adversely affects the image of the World Games.
4. The limits of financial means available to the IF to conduct anti-doping controls constitute no justification in order to excuse the inadequate number of out-of-

**competition controls. An IF wishing to take part in the World Games must respect the rules of the IWGA and apply proper anti-doping policies. If it is not in a position to ensure the fair conduct of its sport – for whatever reason – such federation cannot claim to have its sport, tainted by doping, included in the World Games programme – so involving indirectly the IWGA in its failures.**

- 5. The validity of the AGM Resolution and the right to be heard of an IF cannot be affected by the fact that the Agenda did not explicitly mention, in the list of issues to be discussed, the suspension of the IF from the World Games, but only the termination of its membership in the IWGA, as long as the vote on the suspension was properly announced in the Booklet and the IWGA members had not been taken by surprise by the discussion and had thus the opportunity to get prepared to the debate.**
- 6. Under Swiss law and CAS jurisprudence, in disciplinary matters a reasonable balance must be struck between the violation and the sanction. The sanction of the suspension from the participation in the next edition of the World Games is effective to achieve the purpose sought and does not exceed what is necessary for that purpose if the failures of the IF with respect to the anti-doping system, and the IF's doping record at the World Games, in fact, affect the image of the World Games and of the IWGA.**

The International Federation of Body Building and Fitness (IFBB or the “Appellant”) is an international amateur governing body for the sport of body building and fitness, established in 1946.

The IFBB has its offices in Madrid, Spain, and is a non-governmental, non-profit legal entity registered under Spanish law.

The International World Games Association (IWGA or the “Respondent”) is an association, created in 1980, of independent international sports federations which administer sports or disciplines of sports which are not on the program of the Olympic Games. The IWGA has its offices in Luzern, Switzerland, and is a legal entity with limited liability established under Swiss law.

The IFBB has been a member of the IWGA since the IWGA's foundation.

The IWGA organizes, every 4 years, since 1981, an international multi-sport event for sports and disciplines of sports administered by its member federations, known as the World Games (“World Games”). The most recent edition of the World Games took place in Kaohsiung (Taiwan) from 16 to 26 July 2009.

Following the Kaohsiung edition of World Games, in a letter dated 14 September 2009, the IWGA informed the IFBB that the Executive Committee of the IWGA (“Executive Committee”) had *“unanimously endorse[d] a provisional suspension of the International Body Building Federation and its athletes from the World Games”* (“Decision of 14 September 2009”) on the basis of *“Article 7.2.6e and 10.2.1-2 of the International World Games Association's Constitution”* for the following reason:

*"We regretfully had four of your athletes test positively for banned substances under the IWGA Anti-Doping Rules in the World Games Kaohsiung 2009. One of the athletes was tested twice, once in training and then as a gold medallist. In the second test, he had three additional substances. There were a total of five positive tests for four athletes. The IWGA advised you by email on April 27th where we issued a warning about the adverse publicity we receive from federations who continually have doping issues at the World Games' events".*

In the same letter the IFBB was informed that:

*"It is the IWGA's intention to have this item on the agenda in the upcoming AGM in Dubai for a final decision about the IBBF membership".*

As therein mentioned, the letter of 14 September 2009 followed an exchange of emails that had taken place on 27 April 2009. On that date, in fact:

i. the IWGA sent to the IFBB a message having the following content:

*"... I've seen the many exchange of emails regarding your federation and dome doping issues. It is not the intention of the IWGA to be involved in the internal political issues of any of our member IF's. However, where it concerns doping issues we are certainly concerned. As you know we have already warned the IFBB that the IWGA will NOT continue tolerating doping infractions during the World Games, which continually lead to adverse publicity of your and our organizations. I am hoping that we will not be faced with doping positives in Kaohsiung. ...";*

ii. the IFBB answered to the IWGA as follows:

*"... The situation in Asia is related with doping issues. We have clear that rules are to be respected by athletes and officials.*

*The IFBB is signatory of the WADA Code and our efforts are 100% addressed to eradicate doping and apply the code.*

*Attached you find two documents that speak by themselves:*

*- WADA's letter to Mr Chua*

*- WADA's letter confirming the code compliance by the IFBB*

*We have as a clear priority the full application of the Code. Our federation is already in the ADAMS Program.*

*We are applying doping controls at events and off-season; the rules are applied in full extension and our efforts include a wide educational campaign.*

*We are much honored to be part of World games since its foundation, and our commitment is to contribute in our best capacity for an overall outstanding event and for the sport free of drugs...".*

Following the Decision of 14 September 2009, correspondence was exchanged and contacts took place between the parties. More specifically, the IFBB insisted with the IWGA that it was taking strong action against doping.

On 26 March 2009, the IWGA transmitted to all its members the invitation to attend the 2010 IWGA Annual General Meeting, to be held in Dubai (UAE) on 26 April 2010 ("2010 AGM"). Point 6 of the agenda of the 2010 AGM (referred to as the "Agenda") related to the "Termination of

*membership of International Federation of Body Building and Fitness (IFBB) in the International World Games Association*"; the motions proposed to the 2010 AGM with respect to the various items to be discussed in accordance with the Agenda were detailed in a booklet annexed to the Agenda ("2010 AGM Booklet").

With respect to point 6 of the Agenda, the 2010 AGM Booklet specified the following motion, as submitted for approval by the Executive Committee to the 2010 AGM:

*"That the membership in IWGA of the International Federation of Body Building and Fitness (IFBB) be terminated with immediate effect in accordance with Art. 4.4 of the IWGA Constitution".*

In support of such motion, the following justification was indicated in the 2010 AGM Booklet:

*"Since Doping Controls were introduced by the IWGA in 1989 (Karlsruhe), IFBB's participants in The World Games have tested positive in anti-doping tests to a level that the IWGA Executive Committee considers unacceptable.*

*The following list shows the number of adverse analytical findings at each event:*

*2009 Kaohsiung – 6 positive tests in total – of which 5 from IFBB*

*2005 Duisburg – 3 positive tests in total – of which 2 from IFBB*

*2001 Akita – 5 positive tests in total – of which 1 from IFBB*

*1999 Lahti – 2 positive tests in total – of which 1 from IFBB*

*1995 The Hague – 7 positive tests in total – of which 6 from IFBB*

*1991 Karlsruhe – 2 positive tests in total – of which 2 from IFBB*

*This list shows that out of 25 adverse analytical findings since 1991, 17 were from IFBB, that is two-thirds of the total number of positive analyses. The other positive tests are spread amongst various sports, so can be considered as isolated incidents, which is certainly not the case with bodybuilding.*

*The IWGA leadership has had several discussions with IFBB in recent years to try to improve the situation. However, as is demonstrated by the afore-mentioned statistics, these have had no result; on the contrary, the situation has deteriorated. Also, the analyses of the samples taken from bodybuilders did not show the presence of a single forbidden substance, but rather of a wide range of forbidden substances in each sample, so that it is reasonable to conclude that the use of doping was intentional. At Kaohsiung, one of the bodybuilders was tested twice. The second test revealed the presence of more forbidden substances than the first.*

*This situation specifically, and the general history of IFBB's test results, are very bad for the reputation of IWGA in the eyes of the IOC and WADA, as well as of the international sports community as a whole. The consistently high proportion of adverse analytical findings harms the general standing of The World Games and the integrity of all the sports represented by IWGA. Not least, it is a violation of all World Games athletes' right to compete in a doping-free environment.*

*One of the statutory objectives of the IWGA is to raise the status and image of its Member Federations and to improve the public prominence of the sports of the Member Federations. The anti-doping test results of the IFBB damage the public reputation of The World Games and risk adversely affecting other sports in The Games, a situation that can no longer be accepted".*

The 2010 AGM Booklet, however, contained the indication that, depending on the results of the vote on the primary proposal of the Executive Committee (i.e., the termination of the IFBB's membership in the IWGA), the 2010 AGM could be invited to confirm the Decision of 14 September 2009. In this respect, the 2010 AGM Booklet read as follows:

*“On learning of the Kaobsiung test results, the IWGA Executive Committee unanimously decided to suspend IFBB with immediate effect under Articles 5.2 and 10.2. of the IWGA Constitution and Article 2.2 of the Rules for The World Games. The present status of the IFBB is therefore that it is suspended from participation in The World Games. This suspension must be confirmed, revised or removed by the Annual General Meeting in accordance with IWGA Constitution Art. 10.2.1. Since termination of IWGA membership is a more radical step than suspension, a decision will first be made on the motion in paragraph 1 above. If necessary, depending on the result of this vote, the AGM will then be invited to confirm the ExCo's suspension decision”.*

Finally, the 2010 AGM Booklet specified the procedure to be adopted in relation to the motion proposed under point 6 of the Agenda and had attached the text of some provisions deemed to be relevant in that respect:

- i. Articles 4.4, 5.2, 10.2.1 and 10.2.2 of the IWGA Constitution and Regulations (“IWGA Constitution”); and
- ii. Articles 2.2, 2.2.1, 2.2.2, 2.2.3, 2.2.4 and 16.3.2 of the Rules of the World Games (“WG Rules”).

Some days before the 2010 AGM another document was distributed by IWGA to its members, containing *“Additional Information on & Confirmation of Item #6 of the Agenda”*.

At the 2010 AGM, as the required majority for the approval of the motion to terminate the IFBB's membership in the IWGA had not been reached, a resolution (“AGM Resolution”) was adopted confirming the Decision of 14 September 2009 to suspend the IFBB from the World Games. The pertinent portions of the minutes of the 2010 AGM <sup>(1)</sup> read, in this respect, as follows:

**“6. Termination of membership of International Federation of Bodybuilding and Fitness (IFBB) in the International World Games Association**

**6.1 Introduction by IWGA President / Motivation of the proposed termination of IFBB**

*President Froeblich opened by stating he had to address an item which was unpleasant for all. He did it only out of fairness and respect to other IWGA members and he spoke with the full and unanimous backing of his Executive Committee members. His statement was as follows:*

*“You have received from the IWGA Secretariat the following documents:*

- *The papers of the General meeting including item 6 with an Annex, which contains a proposal by the ExCo to terminate the membership of the IFBB*
- *The additional document and confirmation of the agenda item as sent by the office last week after we received the appeal to CAS*

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<sup>1</sup> Reference is made to the text of the minutes filed in this arbitration by the Respondent as Exhibit R18. Such text will be submitted for approval to the assembly general meeting to be held in 2011.

*Before giving the floor to the IFBB President Froeblich clarified the ExCo position on this matter. After this the IFBB will be able to give their statement followed by the possibility for all members to ask questions or give comments. Finally, I will make a short statement and we will then proceed to a secret vote. This procedure has already been communicated to all of you as part of the agenda.*

*At this stage I would restrict my remarks to the following:*

*As you can see from this graph the positive tests in The World Games from 1989-2009 which includes 6 Events. You can see regretfully that Bodybuilding has a major percentage of all tests versus all the other sports.*

*Already in April 2009, given the long history of positive doping cases by IFBB athletes at World Games, as you can see on this slide, I issued a warning to the President of the IFBB on behalf of all of you that there would be serious consequences if there was no improvement on the track record of Bodybuilding cases in the Games in Kaohsiung. I did this because the ExCo was concerned about the overall credibility of The World Games and of the adverse effect on the reputation of all the IWGA members. IFBB was not the only federation that was warned in this matter, so has not been singled out unfairly.*

*When it became clear that the IFBB had several anti-doping rule violations in Kaohsiung, the IWGA ExCo decided unanimously to suspend the IFBB from participation in The World Games.*

*On the 14<sup>th</sup> of September 2009, I wrote to the IFBB informing them that the matter would be placed on the agenda of the AGM for final decision on the IFBB membership. This clarified that suspension was intended as an interim measure pending a formal decision concerning the possible termination of IFBB's membership.*

*This letter and a further letter on 2<sup>nd</sup> November 2009 in which a reference was made to a final and definitive decision on membership leave no doubt that the IFBB was duly informed within the statutory time limit that the question of its membership would be included on the agenda of the AGM.*

*We also would like to inform you about the feedback we received from WADA when we requested information on their analysis of the current testing program of the IFBB. The WADA Director General has confirmed to us in writing that the IFBB is not conducting an effective doping program in relation to the risk in their sport.*

*With this introduction and the material you have received we consider that you have all the information from IWGA that you need to decide on this matter.*

*However, we now give the opportunity to the IFBB to state their case”.*

## *6.2      Response statement of the IFBB*

*IFBB President Mr. Santonja started by re-submitting to the IWGA President a request to withdraw Item No. 6 from the agenda. He understood that President Froeblich would not accept, but asked formally that notice of his request be included for legal purposes in the minutes. President Froeblich agreed to this procedure*

*Mr. Santonja stated his intention was not confrontation but just to defend his federation's rights and those of all his athletes and delegates who were fighting against doping, for clean and fair sport. The IFBB, as an original founding member of The World Games respected the IWGA organization.*

*Mr. Santonja called into question whether Article 4.4 of the IWGA Constitution had been complied with, alleging that he had not received the necessary 4 months' notice of the proposal to terminate IBBF's membership. In his opinion President Froeblich's letters of September 14th, 2009 and November 2<sup>nd</sup> 2009 made no specific mention of termination of membership. He drew a distinction between termination and suspension, and claimed that the constitutional procedures in each case were different. In this opinion there had*

*been a procedural irregularity, because the first explicit reference to termination had been received on March 26<sup>th</sup>, 2010, 30 days before the Annual General Meeting.*

*Mr. Santonja stressed that, in accordance with international and Swiss law, IFBB had the right to a hearing before a fair and impartial body. He pointed out that in The World Games Constitution there were no procedural rules regarding hearings.*

*Therefore, on January 4<sup>th</sup> 2010, he had written to President Froeblich asking for a clear statement of the specific charge, or charges, brought against the IFBB, together with the article, or articles, of the aforementioned World Games governing documents alleged by the IWGA to have been breached by the IFBB. He was asking for this information in order to be able to defend the rights of his federation. Unfortunately, he had not received replies to this letter, nor to his previous letter of December 4<sup>th</sup>, 2009. He considered that this ran counter to the assurance he had received from President Froeblich that the IBBF's case would be handled "with the utmost care, granting complete fairness, observing the basic rights..." and that his federation would be given every opportunity to explain its position.*

*The case presented in the agenda and distributed to IWGA members 30 days before the General Meeting did not, in his opinion, provide IFBB with the necessary opportunity to defend itself or answer the IWGA's assertions, except now at the General Meeting.*

*Mr. Santonja interpreted the role of the members attending the General Meeting to be that of a jury judging a case. Thirty days' notice was in his view too short to give IFBB the opportunity to defend their viewpoint and therefore prejudiced IFBB's defense even before it was presented.*

*He challenged the short amount of time that had been allowed to the IFBB at the AGM to defend itself against termination of membership – only 10 minutes for this very tough situation, whilst 2 minutes were allowed to each member International Federation for comments. He considered the members of the International Federations to be the jury in a legal case, with two parties, the international World Games Association as plaintiff and IFBB as defendant. He maintained that the "jury" should not, for reasons of fairness and impartiality, have the opportunity to comment until it has rendered its decision.*

*Furthermore, he challenged the right of the IWGA President to have the last word before the vote was taken. Continuing with his analogy of a trial in a court of law, he maintained that it was the defendant not the plaintiff who should have the last word.*

*Mr. Santonja also drew attention to mistakes in the dates of previous World Games, which in this view indicated lack of attention to detail. He also referred to what he considered to be inconsistencies in the numbers of IFBB anti-doping test violations in Duisburg and Akita. He had seen no official documentary evidence to support the IWGA statements, since he never received documents from the laboratories concerned.*

*He also challenged the IWGA to provide documentary evidence that it had received adverse publicity from federations that continually have doping issues at The World Games. The onus was on IWGA, in his view, to prove that IFBB tests results were very bad for the reputation of The World Games, harmed the general standing of The World Games and damaged the public reputation of The World Games. An Internet search had revealed no such adverse effects on The World Games. He challenged the IWGA to identify bad publicity about The World Games. Sometimes, he said, The World Games had no publicity at all.*

*Mr. Santonja then went on to claim that the IWGA had unfairly singled out IFBB from among all the member federations that were still "in the process of becoming compliant" with the WADA Code, and had sought to obtain from WADA evidence about their non-compliance.*

*As far as he knew, neither the IOC or WADA has expressed any views against IFBB. He pointed out that since 1968, over a period of 11 Summer Olympic Games, two sports had produced 29 and 38 positives but nobody had asked for their withdrawal from the Summer Games. He saw this as evidence that the IOC applies the concept of working together to free sport from doping, not to punish the federation.*

*IFBB had never received any protests from anyone in the international sports community. The World Games had not disclosed any documents or evidence to support its claims that IFBB had harmed IWGA in any way, shape or form. In a hearing, said Mr. Santonja, the plaintiff had the burden of proof. IFBB asserted that The World Games had not met its burden of proof to justify termination of membership with immediate effect.*

*IFBB belonged to the General Association of International Sports Federations and had signed the WADA Code in 2003. WADA had confirmed that the IFBB anti-doping rules were in line with the WADA Code 2009. IFBB used the ADAMS program and was one of the three first non IOC recognized SportAccord members using ADAMS.*

*Mr. Santonja said that IFBB was in a clear honest fight against doping. To expel the IFBB would be like a fireman fighting a fire by throwing gasoline on it. IFBB produced a lot of documents in 9 languages and tried to educate their athletes everywhere.*

*Mr. Santonja started his conclusion by stating that this was his first mandate as president of the International Federation of Bodybuilding and Fitness. He had been devoted all his life to clean sport and the fight against doping, and asked for the support of all federations.*

*In particular he drew attention to the discipline of fitness, which had had no doping cases. He wondered why these athletes had to be punished when they had done nothing against the rules.*

*He asked for solidarity in working toward the common goal to eradicate doping in sport.*

*Finally, Mr. Santonja appealed to members when they cast their secret votes to think of all the officials and athletes who strongly and passionately believed in a doping-free sport for health. He also warned that if IFBB were punished today, after having only 10 minutes to present its case, tomorrow with this president maybe any other federation could suffer a similar fate. With that, he thanked colleagues for their attention.*

*President Froeblich thanked Mr. Santonja, and pointed out that he had had as much time as he needed to present his case. He now opened the floor for discussion.*

### 6.3 IWGA Member Federations Comments

*Karate President, Mr. Antonio Espinos, commented that for an international federation it was always difficult to vote to expel a fellow international federation. However, he recognized the seriousness of the situation. An alternative approach that could be, since the Board had the power to decide on the program of The World Games, to give the International Bodybuilding Federation a short deadline to present a plan to the Board that could be acceptable. Instead of showing a straight red card to the IBBF, he proposed to show them a yellow card now, and allow a few weeks for a plan to be presented and accepted by the Board. In his view, expulsion of the IBBF from The World Games would remove their main tool for the immediate changes needed inside the International Federation of Bodybuilding for staying in The World Games.*

*Netball CEO, Ms. Urvashi Naidoo, asked for clarification of the correct statistics of the positive tests before she made her decision. She favoured a compromise in which the Executive Board had the power to determine a suspension rather than a termination.*

*Korfball President, Mr. Jan Fransoo, expressed disappointed that Mr. Santonja had taken a legal perspective, and had not looked very much at the facts of what happened. He sought clarification from the IFBB on the*

*following issues: First, did the IFBB recognize that the majority of positive cases at The World Games have occurred in the Bodybuilding competition? Secondly, did the IFBB accept that the number of positive cases over time have not been decreasing? Thirdly is the IFBB ready to accept that they will not appear on the programme for 2013, thus recognizing that there is a problem in Bodybuilding sport at this stage? If the answers to these questions were positive, IFBB could work on the problem for a few years, working on changing the attitude of a significant number of elite athletes in Bodybuilding. This would require the IFBB to take the initiative and to make this declaration.*

*Bodybuilding President Mr. Rafael Santonja responded, mentioning that in Kaohsiung there were no positive cases in Fitness, and in all the history of The World Games, to his knowledge. Also there were no positive cases amongst the females. He accepted however that they had indeed had many positive cases. He favored 100% testing of IFBB competitors because in the male sport there had been a high number of positive cases. He also proposed incorporating height/weight categories. When he was elected to the presidency he had put new rules into effect. He promised that each and every athlete performing at the next Games would pass through the ADAMS program. He asked for the inclusion of the new categories which a very low profile of positive cases.*

*Korfball President, Mr. Jan Fransoo asked whether he accepted that one or more of his competitions would be withdrawn from the next World Games edition.*

*Bodybuilding President Mr. Rafael Santonja said he believed he had already replied by offering the possibility to have all IFBB athletes go through the ADAMS program for the next Games.*

*IWGA Board Member, Mr. Tom Dielen clarified, in relation to the question on statistics, that in Duisburg there were indeed three cases and not two. The confusion had arisen because at the closing press conference only two had been mentioned because in one case follow-up testing was required which the athlete had subsequently refused to comply with, thus adding a third violation.*

*Gymnastics Secretary General, Mr. Andre Gueisbuhler fully understood that Bodybuilding was formally in compliance with WADA rules, but these also had to be enforced. He regretted that the focus was on legal matters and asked to hear a bit more about what IFBB was actually doing to enforce the rules they were claiming to respect. Doping controls in competition were one thing, but all knew that the most effective controls are those conducted out of competition. He wished to know how many out of competition controls IFBB made, and if they would be willing to increase the number and even have them under the certain control of the Executive Board.*

*Aikido Assistant Secretary General, Mr. August Dragt, felt that the situation was complicated. All recognized the seriousness of the issue and expected the Executive Committee to take serious action. He understood that the Bodybuilding Federation must defend its position, but agreed with Mr. Fransoo of Korfball that a legal approach creates the wrong discussion. He felt that members of the Assembly were being asked to take a very harsh decision based on limited information, or a possibility of a compromise. He supported giving the Executive Committee the power to negotiate a solution with the IFBB and if that failed to suspend the IFBB.*

*Bodybuilding President Mr. Rafael Santonja stated, regarding Duisburg, that there were two positive cases, one being a high rate of testosterone, which he thought was no longer considered by WADA as a banned substance. The athlete concerned was listed as a bronze medallist. The athlete was not suspended by IFBB, so there seemed to some doubt about the statistics presented. Regarding out of competition doping controls, IFBB had increased these by 100%, but these controls cost about 800 – 1000 Euros and IFBB had budgetary constraints. They were now incorporating tests in at-risk countries. He was willing to do more, but the problem was the budget, as was the case for most amateur federations.*

*Netball CEO Ms. Urvasi Naidoo asked for the precise number of out of competition tests conducted by IFBB.*

*Mr. Rafael Santonja confirmed that this year the IFBB would perform 30 tests out of competition and 90 in competition, in addition to more conducted by continental federations. IFBB controls medallists at world level and the continental federations establish the program at continental level, following the WADA code.*

*IWGA Board Member Mr. Tom Dielen stated that T/E ratio (testosterone count) was still on the WADA list as far as he knew. There had been a change in the level only. He referred to an email received from David Honman (WADA CEO) on 6<sup>th</sup> April reading as follows: "As for the announcement of anti-doping programs IFBB has created a test distribution plan and a registered testing pool. Whereabouts information has been collected but the use of ADAMS is not satisfactory and needs to be improved. IFBB is conducting in-competition tests but the number of out-of-competition tests does not seem to be proportionate to the size of the registered testing pool and the level of risk of doping present in that sport." WADA had confirmed that IFBB had conducted 4 out-of-competition tests last year before The World Games. At the World Games, the IWGA did more than double the number of out-of-competition tests which resulted in the cases under discussion.*

*Mr. Santonja pointed out that Mr. Dielen was referring to the previous year's numbers. He claimed to have a letter dated 13<sup>th</sup> April from WADA that expressed satisfaction with the IFBB testing programme. As increased number of out-of-competition tests off season had produced just one positive from The World Games. He could provide very precise information about this.*

*Korfball President Mr. Jan Fransoo asked to know the size of the IFBB's registered testing pool, and received the reply 155 athletes. He pointed out that 30 tests per year implied that each athlete in the pool would be tested once every 5 years.*

*Mr. Santonja stressed that the figures cited were for the year 2010. IFBB was improving the situation, changing the rules, improving the official doping controls and incorporating the tests. If tests conducted by continental federations were included, the number rose to 120 tests. Also, tests conducted by national authorities had to be considered.*

*The International Rugby Board delegate, Mr. David Carrigy, asked what education initiatives had been put in place by IFBB, given there was an issue apparently within the sport. The booklets shown were really WADA booklets which the federations could amend themselves. Were there any additional initiatives the IFBB had taken to try and eradicate doping from the sport?*

*Mr. Santonja replied that he had brought with him a booklet printed in 9 languages, called IFBB Pocket Guide for Doping Control, which was distributed to athletes at international events. IFBB conducted an education programme and details could be provided and had already been submitted to WADA. The educational material includes procedures for doping control, the web-pages the people have to evaluate, what are the rules, and most important matters, as well as specific documents from the World Anti Doping Agency.*

*Air Sports President, Mr. Pierre Portmann, asked that the meeting get back to the agenda. He felt the discussion was being conducted like a hearing in a court of law and he was not in possession of all the elements. He wished to express his confidence in the Board because this matter was not a new thing. He had been in similar meetings for 14 years and had first heard about the problem with Bodybuilding many years previously. Nevertheless, Bodybuilding had decided to go to court to contest the power and the ability to act of the General Assembly, which is the highest decision-making body in all sports federations. He felt therefore that the General meeting should decide. But with conflicting information it was difficult to arbitrate. Suspension had been pronounced by the ExCo for 2013. Bodybuilding had gone to court to know if IWGA was allowed to*

*discuss this matter today, if time-limits had been respected etc. He suggested they should go to the judges again to see if they would support and maintain the suspension. The meeting should not start discussions and compromises before the court came to a conclusion.*

*Racquetball President, Mr. Keith Calkins, asked how much was allocated for drug testing in the IFBB's operating budget.*

*Bodybuilding President, Mr. Rafael Santonja, replied that almost 50% of their total budget was directly involved in doping control. IFBB asked for their continental federations to allocate a similar proportion. Regarding the legal matters, IFBB had to protect the integrity of its sport using any legal tools available. He was sure this would be understood by everybody.*

#### 6.4 Closing comments of the IWGA President

*IWGA President Ron Froeblich, closing the discussion, commented that as president of the IWGA he was always concerned about athletes, first and foremost. This was not an issue directed against the athletes. He reminded the meeting that 75% of the votes was needed to decide on the expulsion of IFBB. However, a percentage of that kind was not needed to suspend Bodybuilding from The World Games. IFBB had to come up with some solutions that were acceptable to members. The Executive Board decided to bring the IFBB doping issue to the floor of the highest instance of the International World Games Association, whose credibility was at stake. This was not at all a personal matter. He had been to see IFBB events, and to discuss the doping question with the late Ben Weider in Montreal. He had the duty to protect IWGA members, the integrity of all sports, and the entire World Games operation. The existing situation was not acceptable, and this was unfortunate. If the members decided to expel IFBB, they had an opportunity for appeal. If the decision went against termination of membership, the meeting would be asked to confirm the ExCo's decision to suspend IFBB from the Games.*

*Mr. Froeblich thanked the IFBB President for his remarks, and accepted that there had been some typographical errors, but assured him that the test statistics were accurate. IFBB was, as he knew, not the only federation to receive a warning prior to Kaobsiung. The IWGA President was acting in the interests of the sporting family as a whole.*

*The Bodybuilding President, Mr. Rafael Santonja, pointed out that the case had been brought based on bad publicity. He considered that there was no bad publicity. He acknowledged that there was a problem with doping. Bodybuilding was a very popular sport with a million participants, and there were people in favor of doping controls and people not in favor. The flag in the fight against doping had been carried by the IFBB since 1986, and they were struggling for this and doing their best, increasing the number of tests. They needed IWGA support. It was his duty to represent a federation that was a founding member of The World Games. He thanked the President and delegates for listening.*

*Confirming that President Santonja had had all the time he needed to present his case, President Froeblich then called for the vote on a basis of a secret Ballot.*

#### 6.5 Secret voting by the members

*Secretary General Koren called the names of the 28 member federations present to collect their ballot and to vote.*

*Mr. Max Bishop explained that abstentions were not counted as votes cast. Only ballot papers where yes or no were indicated would be counted. An abstention did not represent a vote cast.*

*Mr. Dragt of Aikido objected, saying that in the case of membership termination, this was not the proper procedure.*

*Mr. Bishop pointed out that the constitution stated quite clearly that it is 75% of the votes cast. If you abstain you do not cast a vote.*

*Mr. Dragt added that if you had a ballot paper that allowed for abstentions, this matter would not have been a constitutional question.*

*Secretary General Koren reiterated that this procedure had been announced in the agenda clearly and no objections had been received to that. It was very important to clarify this matter, so it was sent to members in writing well before the meeting.*

*President Froeblich reminded the members if the 75% for membership termination was not obtained, the AGM would have to consider the ExCo's decision to suspend the IFBB. There would be a second secret vote after the coffee break if necessary to confirm that the suspension will remain in effect until removed by the ExCo or by resolution of the General Meeting as per Article 10.2 of the IWGA Constitution.*

*President Froeblich then asked the three scrutineers to come forward.*

#### *6.6 Statement of the Result by IWGA President*

*President Froeblich announced the results of the vote, as follows: 14 in favor, 13 against and 1 abstention – a total of 28 votes. The necessary 75% majority was not reached. Therefore, a second secret vote would be conducted to ask the Assembly to confirm the decision of the ExCo to suspend the IFBB. He confirmed that this suspension would remain in effect until removed by the ExCo or by a resolution of the General Meeting, as per article 10.2 of the IWGA Constitution.*

*Mr. Vervaecke of Lifesaving stated that under Rule 5.2 the ExCo could decide on admitting sports to the program. He did not see the need for suspension because the Executive Committee could decide on the program of the next Games on the basis of “any other aspect deemed relevant”.*

*President Froeblich stated that he wanted confirmation from the AGM of the ExCo's decision to suspend.*

*Mr. Bishop reminded the President that in any case Article 10.2.1 of the Constitution requires that any suspensions imposed by the ExCo “shall take effect forthwith and shall be discussed at the next General Meeting of the IWGA for confirmation, revision or removal”. So there was a constitutional requirement for the decision of the ExCo to suspend the IFBB to be confirmed.*

*Mr. Dragt of Aikido expressed his appreciation for the opportunity to support ExCo decisions. He preferred this to leaving it as a drawn conclusion from that the fact that a sport was not invited to participate. He fully supported the proposal.*

*Mr. Espinos of Karate was confused about the logic of the Board's proposing to the AGM the termination of membership of the Bodybuilding Federation, when it had previously decided to suspend it.*

*President Froeblich responded that the Board had made the decision to suspend IFBB earlier. They had received notice in writing, and referred to this in their comments to the CAS. It was normal to decide first on the most radical proposal, termination of membership, and now that the necessary 75% majority had not been achieved, it was necessary to obtain confirmation of the suspension decided by the Executive Board and notified to members in the agenda papers. Only a simple majority was required for this.*

*Secretary General Koren called the member federations forward to receive their ballot for the vote.*

*President Froeblich announced the results of the vote to confirm the suspension of the IFBB by the Executive Board, as follows: 19 in favor, and 9 against (28 votes). The required simple majority being 15, it was therefore announced that the Board's decision to suspend the IFBB had been confirmed by the AGM.*

*President Froeblich thanked the AGM for their contributions, and stressed he hoped efforts would be made by the IFBB to improve the situation. IWGA would continue to try to find a way to help IFBB as it would help all member federations, but it would always do what was in the best interests of the integrity of this organization”.*

On 17 May 2010, the IFBB filed a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the “Code”), to challenge the AGM Resolution.

The IFBB’s statement of appeal included some procedural motions. In fact, the IFBB requested, *inter alia*, that:

*“the Respondent be ordered to supply the CAS and IFBB ... with the complete minutes of the IWGA General Meeting held on 26 April 2010 with the grounds of the Challenged Decision [i.e., of the AGM Resolution] with a copy of the IWGA Executive Committee Decision of 14 September 2009 and with the names of all the IWGA Executive Committee members who participated in the taking of such decision”.*

On 28 May 2010 the Respondent filed a letter, with attachments, intended *inter alia* to answer to the request for information. In such letter, the Respondent:

- i. indicated that the minutes of the 2010 AGM would be soon circulated;
- ii. specified its position with respect to the requested “*detailed grounds of the decision*” adopted at the 2010 AGM, and to the “*decision of the ExCo*”, and provided some “*information regarding decisions on the Global World Games Program*”; and

On 8 June 2010 the Appellant filed its appeal brief. The appeal brief had attached 25 exhibits (A6 to A30) and contained the Appellant’s request that 11 witnesses be heard at the hearing. In the cover letter, the Appellant confirmed that the appeal brief was filed “*in order to gain some precious time ... without waiting for the Respondent’s filing of the minutes of the Annual General Meeting held on 26 April 2010 and of the grounds of the Challenged Decision, including the copy of the IWGA Executive Committee Decision of 14 September 2009 and with the names of all the IWGA Executive Committee members who participated in the taking of such decision*”. The Appellant indicated however that it maintained its request for the production of such information.

On 13th September 2010 a hearing was held in Lausanne on the basis of the notice given to the parties in the letter of the CAS Court Office dated 8 July 2010.

In its statement of appeal, the Appellant requested that CAS “*rules as follows*”:

1. *The decision taken by IWGA on 26 April 2010 imposing a suspension of an undetermined duration on the IFBB is annulled.*

2. *IWGA shall bear all the costs of this arbitration.*
3. *IWGA shall compensate IFBB for the legal and other costs incurred in connection with this arbitration, in an amount to be discretionally decided by the Panel”.*

The relief so sought was confirmed in the appeal brief dated 8 June 2010, as follows:

- I. *The decision taken by IWGA on 26 April 2010 imposing a suspension of an undetermined duration on the IFBB is annulled.*
- II. *IFBB shall not be imposed any sanction for the reasons exposed at the IWGA General Meeting held on 26 April 2010.*
- III. *IWGA shall bear all the costs of this arbitration, if any, and shall in any event reimburse the minimum CAS Court Office fee of CHF 500 paid by IFBB.*
- IV. *IWGA shall compensate IFBB for the legal and other costs incurred in connection with this arbitration, in an amount to be discretionally decided by the Panel”.*

In the answer dated 29 June 2010, the IWGA requested that:

- “1. *The appeal of IFBB shall be dismissed.*
2. *The Appellant IFBB shall be ordered to pay all costs of these proceedings.*
3. *The Appellant IFBB shall be ordered to pay to Respondent an amount corresponding to costs and expenses incurred in relation with these proceedings, including a contribution towards its legal fees”.*

In summary, the IWGA asks this Panel to dismiss the appeal brought by the IFBB and to confirm the AGM Resolution. In the Respondent’s submission, in fact, *“the decision to suspend the Appellant from the participation for the next edition of the World Games is properly supported by the regulations and represents an adequate measure to protect the integrity of the World Games”.*

## LAW

### CAS Jurisdiction

1. CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS, which is not disputed by either party, is based *in casu*, pursuant to Article R47 of the Code, on Article 10.3 of the IWGA Constitution.
2. Article 10.3 [“*Disputes and Arbitration*”] of the IWGA Constitution reads in fact as follows:  
*“Member Federations, before bringing a conflict between them and the IWGA before a Court of Justice, shall refer such conflict to the Court of Arbitration for Sports (CAS), established by the IOC”.*

### Appeal proceedings

3. As these proceedings involve an appeal against a decision imposing a suspension, issued by an international sports organization (IWGA), whose statutes provide for an appeal to the CAS, they are treated as appeal arbitration proceedings in a disciplinary case, within the meaning and for the purposes of the Code.

### Admissibility

4. The statement of appeal was filed within the deadline set in IWGA Constitution. No further recourse against the AGM Resolution is available within the structure of IWGA. Accordingly, the appeal is admissible.

### Scope of the Panel's review

5. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

### Applicable law

6. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute  
*“according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
7. The 2010 AGM adopted the AGM Resolution, challenged in this proceedings, on the basis of the IWGA rules and regulations deemed applicable, initially, when determining whether the IFBB's membership in the IWGA should be terminated and, subsequently, when deciding whether the suspension imposed by the Decision of 14 September 2009 had to be confirmed.
8. The Panel therefore considers that the IWGA rules and regulations are the “applicable regulations” for the purposes of Article R58 of the Code. Swiss law, being the law of the country in which the IWGA is domiciled, applies subsidiarily.
9. The provisions set in the IWGA rules and regulations which appear to be relevant in this arbitration are the following:

i. IWGA Constitution:

#### 4. MEMBERSHIP

4.1 *Membership of the IWGA is open to International Sports Federations who are full members of the GAISF and who have sports or disciplines of sports, which are not included in the programme of the Olympic Games and have adopted and implemented the World Anti-Doping Code and remain in compliance with that code. [...]*

4.4 *Membership of the IWGA may be terminated with immediate effect by a decision of the General Meeting of the IWGA on the conditions that*

- *the proposal to do so has been notified to the Member Federation concerned at least four (4) months in advance;*
- *the proposal has been included in the Agenda of the General Meeting, and*
- *it is carried by at least three-quarter (¾) of the votes cast in that meeting.*

*If such a decision is taken, the Federation concerned has to fulfil the obligations accrued until the day of the decision. Moreover it will forfeit any membership fees paid for the current year.*

#### 5. PARTICIPATION IN WORLD GAMES EVENTS

5.1 *The right to participate in World Games events is restricted to sports and disciplines of sports controlled by Member Federations. Events which are on the programme of the Olympic Games cannot be included in the programme of a World Games. Membership of the IWGA does not automatically imply participation in World Games events. The criteria sports and disciplines of sports must meet to be eligible for participation are explained in the Rules of the World Games.*

5.2 *The ExCo shall decide on admitting eligible sports events to the sports programme eligible to the sports programme of a specific World Games event, taking into consideration such aspects as finance, available sports facilities, and any other aspects deemed relevant.*

#### 7.2 EXECUTIVE COMMITTEE

7.2.6 *The ExCo has the following tasks and responsibilities: [...]*

- e. *When the General Meeting is not in session, the Executive Committee possesses all of the powers which are not specifically reserved to the General Meeting by law or under this Constitution, and is empowered to make any decision which is not specifically reserved for the Executive Committee under this Constitution, including taking action against Members, or other persons who violate or may violate the Statutes or the Regulations and/or Rules, or harm or may harm IWGA.*

#### 10 MISCELLANEOUS SUBJECTS

##### 10.2 Suspensions and Penalties

10.2.1 *The ExCo shall have the power to investigate and deal with breaches of the Constitution or WG Rules or any act, which in the opinion of the ExCo is against the interests of the IWGA. Any suspensions or penalties imposed by the ExCo shall take effect forthwith and shall be discussed at the next General Meeting of the IWGA for confirmation, revision or removal.*

10.2.2 *Any Member Federation, which in the opinion of the ExCo is not adequately representing its sport or discipline of sport in the World Games or is not acting in accordance with the WG Rules can be suspended or partly suspended (e.g. by discipline) from entry in the next World*

*Games. Each suspension remains in effect until removed by the ExCo or by a resolution of the General Meeting, supported by the majority of the votes.*

ii. WG Rules:

2 PARTICIPATION IN WORLD GAMES EVENTS

2.2 Exclusion from participation by the Executive Committee

*The Executive Committee (ExCo) has the power to deny otherwise eligible sports or disciplines of sports participation in a World Games event:*

*2.2.1 If infrastructure or other constraints in the Host City would make this unavoidable.*

*2.2.2 If the staging of the competition concerned would require expenditure in considerable excess of the average expenditure for all participating sports or disciplines of sports.*

*2.2.3 If the Member Federation concerned does not comply with all administrative requirements relating to the organising of the World Games event.*

*2.2.4 If the Member Federation concerned at or in the period leading up to a previous World Games event by its organisation and performance has caused adverse effects to the event.*

2.3 The official sports programme of World Games events

*The ExCo, in accordance with an evaluation of the criteria mentioned above, takes the final decision on the composition of the official sports programme. Member Federations may lodge an appeal against the decision of the ExCo within four (4) weeks after this decision has been made public.*

### The merits of the dispute

10. The Appellant challenges in these proceedings the AGM Resolution which confirmed the Decision of 14 September 2009 to suspend the IFBB from the World Games. In substance, the Appellant submits that the IWGA rules and regulations do not offer a proper legal basis for the AGM Resolution, which, in addition, was adopted in violation of the IFBB's right to be heard and is in any case disproportionate under Swiss law. The Respondent contests the Appellant's submissions and requests that the AGM Resolution be confirmed.
11. The focus of this appeal, therefore, is limited to the AGM Resolution, which made final the provisional suspension of the IFBB imposed by the Executive Committee. In other words, this appeal is not concerned with (i) the Decision of 14 September 2009, imposing the provisional suspension, which was not appealed by the IFBB, and (ii) any act taken or decision adopted by the IWGA after the adoption of the AGM Resolution.
12. In this context, there are three main questions that the Panel has to examine:
  - A. *the first is whether the AGM Resolution had a proper legal basis in the IWGA rules and regulations;*
  - B. *the second is whether there was any violation of the IFBB's right to be heard at the 2010 AGM;*
  - C. *the third is whether the measure adopted by IWGA with respect to the IFBB pursuant to the AGM Resolution was proportionate.*

13. The Panel will consider each of said questions separately.
  - A. *Can a proper legal basis for the AGM Resolution be found in the IWGA rules and regulations?*
14. The AGM Resolution is criticized by the Appellant for lack of legal basis from several perspectives. In summary, the Appellant submits that the IFBB has not committed any act which entitles the IWGA to suspend it from the World Games, because the IFBB has implemented proper anti-doping regulations, and the actions of the athletes responsible for anti-doping rule violations cannot be attributed to the IFBB.
15. The regulatory framework concerning the participation in the World Games of a federation member of the IWGA is defined by the IWGA Constitution and by the WG Rules, which set terms and conditions for the admission to, and the exclusion from, the World Games by reference to the following principles:
  - i. membership of the IWGA does not automatically imply participation in World Games events. The member federations of the IWGA, in order to be eligible for inclusion of their sport in the programme of the World Games, must meet specific conditions, defined in the WG Rules (Article 5.1 of the IWGA Constitution);
  - ii. the decision on the admission of sports events to the sports programme of a specific edition of the World Games is made by the Executive Committee, which takes into consideration such aspects as finance, available sports facilities, and any other aspects deemed relevant (Article 5.2 of the IWGA Constitution);
  - iii. in order to be eligible for inclusion in the World Games programme, a federation member of the IWGA must guarantee, also on the basis of documented evidence, its ability to organise an elite competition which is reserved for invited competitors of the highest standard only, and its sport must satisfy specific eligibility criteria (to be competitive and the results measurable; not to depend directly and/or only on non-human energy for the performances of the participants; not be of necessity organised in separate age groups; not depend on the availability of ice and/or snow for its competitions) (Article 2.1 of the WG Rules);
  - iv. the final decision on the composition of the official sports programme of the World Games is taken by the Executive Committee (Article 2.3 of the WG Rules);
  - v. the Executive Committee has the power to investigate and deal with breaches of the IWGA Constitution or WG Rules or with any act, which in the opinion of the Executive Committee, is against the interests of the IWGA (Article 10.2.1 of the IWGA Constitution);
  - vi. as a result, the Executive Committee has the power to suspend, with immediate effect, any member federation from entry in the next edition of the World Games, if this member federation is not adequately representing its sport or discipline of sport in the World Games or is not acting in accordance with the WG Rules (Article 10.2.2 of the IWGA Constitution);

- vii. more specifically, under the WG Rules, the Executive Committee has the power to deny otherwise eligible sports participation in a World Games event if, *inter alia*, the member federation concerned at or in the period leading up to a previous World Games event has caused, by its organisation and performance, adverse effects to the event (Article 2.2.4 of the WG Rules);
  - viii. any suspension imposed by the Executive Committee has to be discussed at the next General Meeting of the IWGA for confirmation, revision or removal (Article 10.2.1 of the IWGA Constitution) and remains in effect until cancelled by the Executive Committee or by a resolution of the General Meeting, supported by the majority of the votes (Article 10.2.2 of the IWGA Constitution).
16. In light of the foregoing, the Panel concludes that the decision to suspend the IFBB from entry in the next edition of the World Games was properly taken by the Executive Committee (which is competent for such decision pursuant to Article 10.2.2 of the IWGA Constitution and Article 2.2.4 of the WG Rules), and that the Decision of 14 September 2009 was correctly submitted to the 2010 AGM for confirmation, as required by Article 10.2.2 of the IWGA Constitution.
17. The real dispute in this arbitration with respect to the legal basis of the AGM Resolution concerns the conditions under which a federation member of the IWGA can be suspended from entry into the World Games, rather than the competence of the bodies which took the decision to suspend.
18. On the basis of the relevant rules (see above), a federation can be suspended from entry into the World Games if any of the following conditions is met:
- i. breach of the IWGA Constitution or of the WG Rules or of commission of any act which is against the interests of the IWGA; or
  - ii. inadequate representation of its sport or discipline in the World Games, or acts not in accordance with the WG Rules; or
  - iii. at or in the period leading up to a previous World Games event, causing adverse effects to the event by its organisation and performance.
19. On the one hand, the Appellant submits that such conditions are not satisfied, because the IFBB has implemented proper anti-doping regulations, and the actions of the athletes responsible for anti-doping rule violations cannot be referred to the IFBB. On the other hand, the Respondent submits that the conditions provided by the IWGA rules to exclude the Appellant from participation in the next World Games are met: the Appellant failed to take any serious measure to address doping; and the IFBB's doping affairs put the World Games in an unfavourable light towards the public and the Olympic Movement.
20. The Panel finds the Respondent's contentions more convincing.
21. The basis for the AGM Resolution was indeed the "*bad doping record*" of the IFBB. Reference was made in the discussions at the 2010 AGM and in this arbitration to (i) the numbers of the

anti-doping tests showing positive results during the past editions of the World Games, as well as to (ii) the overall figures of the anti-doping tests performed by the IFBB in 2009:

- i. with respect to the first point, the figures show that in the 6 editions of the World Games (from Karlsruhe 1989 to Kaohsiung 2009), at which doping controls were conducted, out of the total 25 positive results, 17 were attributed to 16 body building athletes (one athlete having tested positive twice). At the Kaohsiung edition of 2009, 19 tests were effected on the 46 body building athletes that took part in the competitions, and showed 5 positive results (by 4 athletes) of the total 6 positives recorded at such edition;
  - ii. in 2009, the IFBB performed 48 urine tests on a registered testing pool of 70 athletes, of which 45 tests were performed in-competition and 3 out-of-competition; of these 48 tests, 16 showed a positive result.
22. The above figures confirm the “*bad doping record*” of the IFBB: at the World Games, two thirds, and at Kaohsiung 2009 more than 80%, of the overall positive results came from body building. At Kaohsiung 2009, nearly one quarter of the body building athletes who were tested reported a positive result. In 2009, one third of the tests performed by IFBB showed a positive result.
  23. Such doping record is certainly highly relevant in the context of the decision, taken with the AGM Resolution, concerning the participation of the sports of the IFBB in the World Games. Furthermore, the inability of IFBB, for whatever reasons, to take serious measures to address doping can properly be considered as contrary to the interests of the IWGA, is contrary to the WG Rules, and one which causes adverse effects to the World Games. The Panel emphasises that every one of these factors supplies a sufficient basis for the decision to suspend the IFBB from participation in the World Games.
  24. The Panel notes in this respect that rejection of the practice of doping is a constitutional principle of the IWGA. Doping contradicts the objectives of the IWGA, as defined by Article 3 of the IWGA Constitution; runs counter to the promotion of the traditional values of sport; contradicts the development of the popularity of the sports governed by the member federations; is inconsistent with the promotion of the status and image of IWGA and its member federations, and with the search of excellence in sport through its practice. Rejection of doping, in addition, is a *sine qua non* of the cooperation between the IWGA and the Olympic Movement.
  25. In such context, the inclusion in the World Games programme of sports tainted by doping contradicts the rules and the interests of the IWGA: not only is it antithetical to one of the basic principles of the IWGA, but it also adversely affects, in the view of public opinion, of the media and of the Olympic Movement the credibility of the World Games events and of their organizer.
  26. It is not possible sensibly to submit as IFFB seeks to do (i) that the IWGA has not proved that the actions for which the IFBB was suspended adversely affected the image of IWGA; or (ii) that the “*bad doping record*” can be attributed only to the athletes, responsible for the anti-

- doping rule violations, and not to the IFBB; or (iii) that since the IFBB's anti-doping rules comply with all requirements defined by WADA the record can be ignored; or (iv) that in any case the IWGA had agreed not to reject the IFBB's participation in the World Games provided it became compliant with the WADA anti-doping requirements before the end of 2011.
27. As to the first point, the Panel underlines that the failure of the IFBB to implement proper anti-doping policies, as indicated by the anti-doping tests showing positive results during the past editions of the World Games, as well as by the anti-doping tests performed by IFBB in 2009, affects in itself the image of the World Games, as it establishes that the member federation is not in a position to ensure compliance of its athletes with the relevant anti-doping regulations.
  28. Proof of damage to the IWGA image, arising out of such circumstances, in fact, does not need, in the Panel's view, confirmation by specific evidence, as it is inherent in the exposure to the public of the "*bad doping record*" of one of its member federations at the World Games – organized by the IWGA.
  29. In any case, the Panel notes that the existence of such damage can be inferred, on the basis of a general presumption that the conduct of illicit practices (such as doping) adversely affects the image of those appearing to be involved. And the Panel notes that Article 8 of the Swiss Civil Code (establishing the rule on the burden of proof: "*Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit*") allows the adjudicating body to base its decision on such natural inferences. Therefore, consequences, whose existence must be presumed to occur in the normal course of events, can supply the basis of a judgment, even if not established by particular evidence, where the party who puts them in issue does not itself provide material which puts their existence in doubt (see award of 27 March 1998, CAS 96/159 & 96/166 A., C. F. & K. v. FEI, at § 16, in REEB M. (ed.), *Digest of CAS Awards, II, 1998-2000*, The Hague 2002, pp. 441-442, mentioning that "*selon la jurisprudence fédérale suisse, dans le cas où une preuve directe ne peut pas être rapportée, le juge ne viole pas l'art. 8 CC ... en fondant sa conviction sur des indices ou sur un haut degré de vraisemblance (ATF 104 II 68 = JdT 1979 I 738, à la p. 545). En outre, des faits dont on doit présumer qu'ils se sont déroulés dans le cours naturel des choses peuvent être mis à la base d'un jugement, même s'ils ne sont pas établis par une preuve, à moins que la partie adverse n'allègue ou ne prouve des circonstances de nature à mettre leur exactitude en doute (ATF 100 II 352, à la p. 356)*").
  30. In light of this adjectival legal principle, the Panel finds that the failure of the IFBB to implement proper anti-doping policies adversely affects the image of the World Games.
  31. As to the second point, the Panel observes that the decision to suspend the IFBB from participation in the World Games was based on the IFBB's failure to take serious measures to address doping within its system and not on vicarious imputation to the IFBB of the actions of its athletes. In other words, the IFBB was held responsible for its own omissions, and not for the acts of third parties.

32. More specifically, the Panel draws attention to the obvious limitations of the IFBB's anti-doping efforts, in terms of results achieved which provides a robust basis for the decision of the 2010 AGM to confirm its exclusion from the World Games: education and promotion of ethical values was lacking; the use of available procedures and tools (such as the Anti-Doping Administration & Management System – ADAMS) was insufficient; the implementation of the rules was poor.
33. In this respect, the Panel relies in particular, but not exclusively, on the fact that in 2009 the IFBB conducted only 3 out-of-competition tests, in a sport, such as body building, where only such tests appear to have any effect. Competitive body building involves body modifications and intensive muscle hypertrophy, itself obtained through preparation and muscle gains for most of the year, while at the competition bodybuilders merely display their physiques to a panel of judges, who assign points based on their appearance. In other words, the physical effort, which can be assisted by doping will inevitably take place for the most part off-season and off stage. Therefore, doping controls, in order to be effective, need to be concentrated in the preparation phase: i.e., out-of-, not in-, competition.
34. In the Panel's view, no justification, to excuse the inadequate number of out-of-competition controls in 2009, can be given by the limits of financial means available to the IFBB to conduct them. An international federation which wishes to take part in the World Games must respect the rules of the IWGA and apply proper anti-doping policies. If it is not in a position to ensure the fair conduct of its sport – for whatever reason – such federation cannot claim to have its sport, tainted by doping, included in the World Games programme – so involving indirectly the IWGA in its failures.
35. In this context, in-competition controls have therefore limited resonance. Nonetheless, the number of positive results appears extraordinary, confirming the inadequacy of the anti-doping culture in the body building world during the period under review.
36. The Panel has indeed noted the commendable efforts undertaken by the IFBB in 2010, explained by Prof. de Arruda Campos at the hearing, and in particular the increase in the number of the athletes to be tested and of the out-of-competition controls to be performed. Such evolution, however, subsequent to the 2010 AGM, does not undermine the basis of the AGM Resolution, which was bound to take account only of the situation at the time of its adoption. Any such improvements can however be considered by the competent bodies of the IWGA, which have the power (under Article 10.2.2 of the IWGA Constitution) to lift any suspension from participation in the World Games. The Panel, however, expresses no view on whether the actions taken by the IFBB justify a removal of the suspension, and would defer on this point to the margin of appreciation of the IWGA as custodian of the Games.
37. As to the third point, the Panel agrees with the Respondent and underlines that it is not rules, but their implementation through an effective anti-doping program, including a sufficient number of anti-doping tests, especially out-of-competition, which is relevant. And, as explained by WADA in a message to the IWGA dated 6 April 2010 (Exhibit R14), the then current in- and out-of-competition testing program of the IFBB "*cannot be seen as effective*". The

data mentioned above, as well as the declarations at the hearing of Mr Fairweather of WADA, confirm the validity of this statement to the Panel's satisfaction.

38. As to the fourth point, it is not possible for IFFB to rely on the statements made by the President of the IWGA at the 2009 IWGA General Meeting (Denver, 24 March 2009) in order to maintain that, even if the IFBB had to be considered as a WADA non-compliant international federation, it should have been given additional time, until 2011 at least, to become compliant, and that it could not legitimately be excluded from the participation in the World Games, provided it became compliant within that time frame before the end of 2011.
39. The relevant minutes of the 2009 IWGA General Meeting read as follows:  
*"In President Froeblich's conversation with Mr. Fairweather there is a list of member federations of the IWGA that are not currently in compliance. President Froeblich did come to an agreement with WADA that as long as those IFs are currently in the process of becoming in compliance they are able to participate in Kaohsiung. Should they not be in compliance within the next two years then they will not be able to participate in the next edition of The World Games".*
40. The Panel cannot construe such declaration, made before the 2009 edition of the World Games, as a waiver of the obligation of, *inter alios*, the IFFB obligation to have proper anti-doping policies applied before the end of 2011, and therefore as preventing any decision by the IWGA in 2009 or 2010, after Kaohsiung 2009, to suspend a non compliant member federation from participation in the subsequent editions of the World Games. In any case the Panel, should the IFBB become compliant before the end of 2011, it could invoke the mentioned declaration to seek the lifting of its suspension.
41. In light of the above, the Panel concludes that the AGM Resolution finds a proper legal basis in the IWGA rules and regulations.  
  
B. *Has the IFBB's right to be heard been violated with respect to the adoption of the AGM Resolution?*
42. The AGM Resolution is criticized by the Appellant because the confirmation of the provisional suspension from the World Games was voted without a prior discussion.
43. The Panel notes, however, that the proposals submitted by the Executive Committee to the 2010 AGM to terminate the IFBB's membership in the IWGA or, alternatively, to confirm the Decision of 14 September 2009 to suspend it from the participation in the World Games, had been announced well in advance of the 2010 AGM, and were based on the same factual and legal elements, i.e. the failure of the IFBB to take serious measures to address the doping issues affecting body building. The Panel notes too that the President of the IFBB had ample possibility to state at the 2010 AGM the position of IFBB in respect of the elements supporting the proposals of the Executive Committee and that discussions took place at the 2010 AGM also with respect to the meaning and purpose of the Executive Committee's proposal to have the Decision of 14 September 2010 confirmed by the 2010 AGM.

44. It is not possible, in the Panel's view, to maintain that the validity of the AGM Resolution is affected by the fact that the Agenda did not explicitly mention, in the list of issues to be discussed at the 2010 AGM, the suspension of the IFBB from the World Games, but only the termination of its membership in the IWGA. The vote on the IFBB's suspension was in fact properly announced in the 2010 Booklet: as a result, the IWGA members could not have been taken by surprise by the discussion on the point at the 2010 AGM and had the opportunity to get prepared to the debate (ATF 114 II 193, consid. C.5.d).
  45. The Panel therefore finds that the IFBB's right to be heard has not been violated with respect to the adoption of the AGM Resolution.
- C. *Is the measure adopted by IWGA with respect to the IFBB pursuant to the AGM Resolution proportionate?*
46. The AGM Resolution is criticized by Appellant under the point of view of proportionality, which requires, under Swiss law and CAS jurisprudence, that in disciplinary matters a reasonable balance must be struck between the violation and the sanction.
  47. Contrary to the Appellant's submission, the Panel finds that the sanction of the suspension from the participation in the next edition of the World Games is effective to achieve the purpose sought and does not exceed what is necessary for that purpose.
  48. The failures of the IFBB with respect to the anti-doping system, and the IFBB's doping record at the World Games, in fact, affect the image of the World Games and of the IWGA. The suspension from participation in the World Games, therefore, constitutes a proper measure to avoid such effect.
  49. The measure adopted, in addition, is not excessive. The suspension of the IFBB in fact refers only to the "*next edition*" of the World Games, as made clear by Article 10.2.2 of the IWGA Constitution, mentioned also in the Decision of 14 September 2009 confirmed by the AGM Resolution, and can be in any moment reviewed, also before such "*next edition*", by the Executive Committee or the General Meeting.
  50. The Panel therefore finds the measure adopted by IWGA with respect to the IFBB pursuant to the AGM Resolution to be proportionate.

## **Conclusion**

51. In light of the foregoing, the Panel finds that the appeal brought by the Appellant against the Respondent with respect to the AGM Resolution is to be dismissed.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by the International Federation of Body Building and Fitness against the resolution adopted on 26 April 2010 by the Annual General Meeting of the International World Games Association, confirming the decision of the Executive Committee of 14 September 2009, is dismissed.

(...)

4. All other prayers for relief are dismissed.