



**Arbitration CAS 2010/A/2161 Wen Tong v. International Judo Federation (IJF), award of 23 February 2011**

Panel: Mr Ercus Stewart (Ireland), President; Mr Michele Bernasconi (Switzerland); Mr Hans Nater (Switzerland)

*Judo*

*Doping (clenbuterol)*

*Right to attend or have the athlete's representative attend the B' sample opening and analysis*

*Procedural mistake*

- 1. According to the 2009 IJF Anti-Doping Regulations (ADR), the athlete has the right to be present for the opening and analysis of his/her B sample regardless of whether it is the athlete or the IJF who requests testing of the B sample.**
- 2. It is now established CAS jurisprudence that the athlete's right to attend the opening and analysis of her B sample is fundamental and, if not respected, the B-sample results must be disregarded. This is so even if denial of that right is unlikely to affect the result of a B-sample analysis.**
- 3. When the analysis of the B- sample is conducted without the athlete being given due notification of the relevant date and time, it is not possible to remedy such a procedural error through the course of the arbitral process. In contrast to violations of the athlete's right to be heard, the arbitration cannot substitute the presence (in its widest definition) of a representative of the athlete at the opening of the B-sample.**

Ms Wen Tong ("Ms Tong" or "Appellant") is a Chinese national who competes as an international-level judoka.

The International Judo Federation (IJF, "Respondent") is the international federation governing judo and is recognized by the International Olympic Committee.

Appellant, who was born in February 1983, is an international-level judoka who competes in the women's 78kg+ category. She started practicing judo at the age of 13 and has gone on to win medals in numerous national and international competitions, including the gold medal at the 2008 Olympic Games in Beijing.

Appellant has undergone over 60 doping control tests throughout her career. Apart from the test at issue in this case, she has never tested positive for any prohibited substances. Prior to the proceedings at issue here, Appellant had no prior experience with anti-doping proceedings.

In August 2009, Appellant competed in the IJF World Judo Championships in Rotterdam, where she won the gold medal in her weight category on 30 August 2009. That same day, following the competition, Appellant provided a doping control sample.

On 8 September 2009, Appellant's A sample tested positive for clenbuterol. By letter dated 14 September 2009, the Cologne Laboratory informed the IJF Medical Commission of Appellant's positive test results. Respondent did not inform Appellant of her test results. Rather, nearly two weeks later, on 29 September 2009, Respondent sent an email to the Chinese Judo Association (CJA) informing it of Appellant's test results. Appellant did not learn of her test results until a meeting with the CJA on 18 October 2009, by which time nearly another three weeks had passed. During her meeting with the CJA, Appellant alleges she was not given any information about the amount of clenbuterol involved or provided any documents concerning the testing of her A sample.

According to Appellant, present at the meeting were, among other people, Mr Zhaonian Song, a member of Respondent's Executive Committee, who was also Respondent's marketing director as well as the vice president of the CJA and an official of the Chinese government. Mr Song allegedly told Appellant not to discuss her case with anyone. Appellant contends he further told her that, although she could request analysis of her B sample, it would not be in her interest to do so, as the test results could not be wrong and requesting analysis of the B sample would only antagonize Respondent. In addition, Mr Song allegedly told Appellant that, if she had her B sample tested and the results came back positive, (1) the commencement date of any ban imposed on Appellant would run from the date of the B-sample analysis, (2) Appellant would not be given any credit for the time she was provisionally suspended, and (3) Respondent could impose on Appellant a longer ban than if she were to simply accept the results of the A-sample analysis.

Appellant alleges that Mr Song insisted that Appellant's best course of action was to cooperate with Respondent in order to gain leniency. Mr Song allegedly stated that, by waiving the B-sample test, Appellant would be seen as cooperating with Respondent and Respondent would be willing to reduce the otherwise applicable sanction and allow Appellant to return to competition early enough to accumulate qualification points required to participate in the London 2012 Olympic Games. Mr Song's remarks were allegedly seconded by Mr Feng-Shan Xiong, another Chinese government official and secretary general of the CJA, who was also present at the meeting.

According to Appellant, no one explained to her during this meeting or at any time (1) what requirements she would have to satisfy before an otherwise applicable sanction could be reduced, or (2) that any sanction longer than six months would bar Appellant from competing in the 2012 Olympic Games pursuant to Rule 45 of the Olympic Charter. She was not aware of this.

At this point, Appellant insisted that her B sample be opened and tested in the presence of a representative on her behalf. Appellant also requested copies of documents related to her A-sample test. Mr Song told Appellant that these would be requested from Respondent. The CJA contacted

Respondent that same day to ask that her B sample be tested. In the meantime, since 18 October 2009, the Appellant has not participated in any competition.

Appellant alleges that, a week later on 25 October 2009, Mr Zhen Liu, the CJA's interpreter, spoke with Appellant on behalf of Mr Xiong and told her the CJA had decided that she had to write a letter to Respondent accepting responsibility for the positive test of her A sample and that he would give her guidance on how and what to write. Like Messrs. Song and Xiong before him, Mr Liu allegedly emphasized that it was in Appellant's best interest to be conciliatory and cooperative with Respondent.

According to Appellant, that same day, Appellant prepared a draft letter as directed by Mr Liu and sent it to him for his review. The same day, Mr Liu allegedly sent it back to her with some revisions, which Appellant incorporated.

In the letter, Appellant wrote that the *"only possible way"* clenbuterol could have entered her system was that she *"went for barbeque with some friends in the informal restaurant nearby my home in a few weekends before attending the Rotterdam World Championships. As I am bigger category, I like meat very much. I eat a lot of pork including some splanchnic goods. There is much possibility that the 'Clenbuterol' which caused my Anti-Doping test as positive is from these food I taken during these weekends before going to Rotterdam World Championships"*.

Appellant further wrote, *"I don't want to defend my self for such case, as I know that I should be responsible for it. However, I am sincerely pleading for light punishment given by IJF and WADA, as I don't want to break my dream either destroy my career for my beloved sport of Judo. I am eager and willing to present beautiful Judo competition in London Olympic Games, and make further and bigger contribution to Judo"*.

Appellant alleges that she understood from the CJA that the letter had been sent to Respondent, but she never received any response to her letter from Respondent. At this point, Appellant understood that the testing of her B sample would still go ahead and that she was still to receive documents from Respondent regarding the test results of her A sample. And on 6 November 2009, the CJA again informed Respondent that Appellant wished to have her B sample tested and the documentation package for the A-sample analysis.

On 8 November 2009, Respondent told the CJA to contact the laboratory directly with respect to the documentation package and the testing of Appellant's B sample.

According to Appellant, three days later, on 11 November 2009, Mr Liu again spoke with Appellant on behalf of Mr Xiong and told her that the CJA had decided that it would be in her best interests for her to withdraw her request to have her B sample tested. Mr Liu then dictated the content of her statement withdrawing her request and Appellant wrote it down and signed it. The CJA sent the statement to Respondent on 14 November 2009. Appellant did not know at the time she wrote out the statement on 11 November 2009 that the CJA had the day before, on 10 November 2009, contacted Respondent and purported to withdraw Appellant's request to have her B sample tested. This the CJA did without telling Appellant or consulting her. In reaction, Respondent asked the CJA to get a written statement from Appellant agreeing to withdraw her request to have her B sample tested; hence Mr Liu's dictating a statement of withdrawal for Appellant to sign.

On 25 November 2009, Respondent nevertheless had Appellant's B sample tested without informing her nor offering her an opportunity to attend herself or through a representative. The B sample also tested positive for clenbuterol.

For nearly six months, Appellant heard nothing further about her case. During this time, on 4 April 2010, Respondent's Executive Board decided to impose a two-year suspension on Appellant, but she was not informed or aware.

On 2 May 2010, Appellant alleges she met with Mr Xiong who informed her that Respondent had recently contacted Mr Song (as a member of Respondent's Executive Committee) to seek his opinion on a proposed two-year suspension. Mr Xiong allegedly instructed Appellant that, if approached, she should not talk to the media, as it would not be in the best interest of her case. Appellant again asked Mr Xiong for the documents concerning the positive test of her A sample. Mr Xiong stated that the CJA had requested them from Respondent, but had not yet received them, and he promised to request them again.

Unknown to Appellant, by this time, Respondent's Independent Doping Commission had already suggested to Respondent's Executive Committee that Appellant be suspended for two years and that her results in the Rotterdam World Championships be annulled, and Respondent's Executive Committee had already agreed with that suggestion on 4 April 2010.

Appellant alleges that, a week later, on 9 May 2010, she learned through the Internet that Respondent had imposed a two-year suspension on her. The following day, 10 May 2010, the CJA summoned Appellant and her coach to a meeting in Beijing. Once there, Appellant alleges that only her coach was allowed to attend the meeting and Appellant was required to wait outside. After the meeting, Appellant's coach allegedly told her that Respondent had informed the CJA that it would impose a two-year suspension on her, though the CJA did not know when the suspension was to start and when it was to end.

Nearly six weeks later, on 19 June 2010, Appellant again asked the CJA for the documents related to the finding of a prohibited substance in her doping control sample. Three days later, on 22 June 2010, the CJA sent Appellant an incomplete set of the documents concerning her positive clenbuterol test, as well as Respondent's letter notifying the CJA of its decision to impose a two-year suspension on Appellant.

On 6 July 2010, pursuant to Article R47 of the Code of Sports-Related Arbitration (2010 edition) (the "Code"), Appellant filed a Statement of Appeal at the Court of Arbitration for Sport (CAS) against Respondent's decision of 4 April 2010 (communicated to Appellant on 9 June 2010) to impose on her a two-year period of ineligibility for an alleged violation of the 2009 IJF Anti-Doping Rules (the "2009 IJF ADR").

By letter dated 22 July 2010 – following a request from Appellant to suspend the time limit to file her Appeal Brief pending Respondent's disclosure of documents relevant to its decision in her case, a request to which Respondent objected – the CAS informed the parties that the Deputy President

of the Appeals Arbitration Division had decided (1) to direct Respondent to provide the CAS with a copy of any and all documents in its file relevant to the proceedings against Appellant and, in the interim, (2) to suspend the time limit for Appellant to file her Appeal Brief.

By letter dated 2 August 2010, Respondent sent to the CAS relevant documents from its file concerning the proceedings against Appellant and CAS sent these on to Appellant.

Following several requests from Appellant for extensions of time, many of which Respondent objected to, the Panel ultimately gave Appellant until 17 September 2010 to file her Appeal Brief, which she did on that day, along with a Request for Further Information (attached as Appendix 1) concerning the laboratory's lower limit of detection ("LLOD") and lower limit of quantification ("LLOQ") for the particular method it used to detect clenbuterol in her sample.

Respondent timely filed its Answer on 13 October 2010. In the letter accompanying its Answer, Respondent stated that it did not consider a hearing necessary in this matter and would not participate in any hearing the Panel might decide to hold. Respondent also asked Appellant to (1) disclose documents establishing when she was notified of the IJF decision from which she appeals, and (2) offered Appellant the opportunity to have her B sample retested. Respondent contended that, if Appellant refused this offer, the Panel should draw an adverse inference against her. Appellant produced the documents Respondent requested in its 13 October 2010 letter, but refused Respondent's offer to have her B sample retested and argued that no adverse inference should be drawn against her in light of her refusal.

By letter dated 28 October 2010, Appellant reiterated and amplified upon its Request for Further Information.

By letter dated 3 November 2010, Appellant sought leave from the Panel to file a second round of written submissions in light of certain evidentiary issues raised in Respondent's Answer. With her letter, Appellant submitted a report of a polygraph examination allegedly designed to determine Appellant's truthfulness when responding to allegations that she deliberately or knowingly ingested clenbuterol before or during the IJF 2009 World Championships in Rotterdam.

By letter dated 5 November 2010, Respondent objected to Appellant's request for a second round of submissions and to the admissibility of the polygraph examination report.

By letter dated 22 November 2010, the CAS notified the parties of the Panel's decision (1) directing Respondent to disclose the further information Appellant requested concerning the laboratory's LLOD and LLOQ for the particular method it used to detect clenbuterol in Appellant's sample, (2) granting Appellant leave to file a second round of submissions and Respondent an opportunity to respond to them, (3) noting Appellant's comments in relation to Respondent's offer to retest her B sample, and (4) noting Respondent's comments in relation to the polygraph examination report submitted by Appellant.

By letter dated 1 December 2010, Respondent disclosed information and documents further to the CAS's 22 November 2010 letter.

Further to extensions of time agreed between the parties, Appellant timely filed her Second Written Submission on 20 December 2010.

By letter dated 30 December 2010, Respondent informed the Panel that it would not file a second written submission.

At all stages, Respondent has stated that it would not attend or be represented at any hearing.

By Order of Procedure dated 6 January 2011, signed by the parties, the parties confirmed that the CAS has jurisdiction over this dispute, the date and time of the hearing, and the witnesses who would be present at the hearing.

A hearing was held indeed on 24 January 2011 at the CAS headquarters in Lausanne. At the close of the hearing, Appellant and her representatives confirmed that they were satisfied as to how the hearing and the proceedings were conducted.

In addition to the Panel, Ms Louise Reilly, Counsel to the CAS, and Ms Kirby, the following people attended the hearing:

- Ms Wen Tong, Appellant
- Mr Adam Lewis, counsel for Appellant
- Mr Antonio Rigozzi, counsel for Appellant
- Mr Mike Morgan, solicitor for Appellant
- Mr James Day, trainee solicitor
- Prof. Vivian James
- Ms Min Wang, Deputy Director of the Tianjin Sports Bureau
- Mr Terry Mullins, polygraph examiner
- Mr Paul Scott (by video conference)
- Ms Weifung Wu (by telephone)
- Mr Simon Bai, assistant to Appellant
- Ms Jane Zou, independent interpreter

Though fully aware of the date and time and invited to attend, Respondent did not attend the hearing, nor was it represented.

## LAW

### Jurisdiction of the CAS

1. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

2. Article 8.1.8 of the 2009 IJF ADR provides as follows:

*Decisions of the IJF Doping Hearing Panel may be appealed to the Court of Arbitration for Sport as provided in Article 13.*

3. Article 13.2.1 of the 2009 IJF ADR provides as follows with respect to appeals involving International-Level Athletes:

*In cases arising from competition in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.*

4. Appellant filed her appeal with the CAS and Respondent has not raised any jurisdictional objections. Furthermore, both parties confirmed that the CAS has jurisdiction in this matter by signing the Order of Procedure dated 6 January 2011. It is accordingly undisputed that the CAS has jurisdiction over Appellant's appeal.

### Applicable Law

5. Article R58 of the Code provides as follows:

*The Panel shall 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.*

6. In their submissions, the parties make reference to and rely on provisions of the 2009 WADA World Anti-Doping Code, 2009 IJF ADR, and ISL, as well as provisions of Swiss law. Accordingly, these regulations and Swiss law are applicable to the merits of the parties' dispute.

### Admissibility

7. Article 13.6 of the 2009 IJF ADR provides in pertinent part as follows with respect to the time for filing appeals:

*The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party.*

8. Based on the documents submitted, Respondent took the decision at issue here on 4 April 2010, and Appellant was notified of that decision on 22 June 2010. Appellant filed her Statement of Appeal on 6 July 2010. The Panel is satisfied that Appellant's appeal was timely filed and is admissible.

### **Merits of the Appeal**

9. Appellant contends, among other things, that Respondent's decision dated 4 April 2010 should be annulled because Appellant was not given the opportunity to be present herself and/or by her representative for the opening and testing of her B sample in violation of Articles 7.1.4 and 7.1.6 of the 2009 IJF ADR. According to Appellant, the right of the athlete to be present applies whenever the B sample is analyzed, irrespective of who asks for it or whether the athlete has for her part waived the analysis, and Respondent's failure to afford Appellant this essential right renders the B-sample analytical results invalid. As those results therefore cannot confirm the A-sample analytical results, no doping violation has been established pursuant to Article 2.1.2 of the 2009 IJF ADR.
10. For the reasons set forth below, the Panel agrees.
11. Article 2.1.2 of the 2009 IJF ADR provides as follows:  
*Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample.*
12. There are accordingly two ways for Respondent to establish an anti-doping violation under Article 2.1.2. Where the athlete waives analysis of the B sample, and the B sample is not analyzed, Respondent can rely on the results of the A-sample analysis alone. This route is not open to Respondent, as Appellant's B sample was analyzed at Respondent's request, and this is admitted by Respondent.
13. Alternatively, where the athlete's B sample is analyzed, Respondent can establish an anti-doping violation under Article 2.1.2 if the analysis of the B sample confirms the presence of a prohibited substance found in the athlete's A sample. As Respondent elected to have Appellant's B sample analyzed, this is the only route open to Respondent to prove an anti-doping violation in this case.
14. Articles 7.1.5 and 7.1.6 of the 2009 IJF ADR require that the athlete be granted the right to attend the opening and analysis of her B sample and provide as follows:



*7.1.5 Where requested by the Athlete or the IJF, arrangements shall be made for Testing the B Sample within the time period specified in the International Standard for Testing. An Athlete may accept the A Sample analytical results by waiving the requirement for B Sample analysis. The IJF may nonetheless elect to proceed with the B Sample analysis.*

*7.1.6 The Athlete and/or his representative shall be allowed to be present at the analysis of the B Sample within the time period specified in the International Standard for Laboratories. Also a representative of the Athlete's National Federation as well as a representative of the IJF shall be allowed to be present.*

15. The athlete thus has the right to be present for the opening and analysis of her B sample regardless of whether it is the athlete or the IJF who requests testing of the B sample. In light of this, Article 7.1.4(d) of the 2009 IJF ADR requires Respondent to inform the athlete of the “*scheduled date, time and place for the B Sample analysis (which shall be within the time period specified in the International Standard for Laboratories) if the Athlete or the IJF chooses to request an analysis of the B Sample*”. And Article 7.1.4(e) requires that Respondent give the “*opportunity for the Athlete and/or the Athlete's representative to attend the B Sample opening and analysis at the scheduled date, time and place if such analysis is requested*”.
16. Moreover, it is now established CAS jurisprudence that the athlete’s right to attend the opening and analysis of her B sample is fundamental and, if not respected, the B-sample results must be disregarded (*see* CAS 2002/A/385, paras. 22-34 – disregarding B-sample results where the neither the athlete nor her federation was given notice of the B-sample analysis). This is so even if denial of that right “*is unlikely to affect the result of a B-sample analysis*” (CAS 2002/A/385, para. 26). This is because an “*athlete's right to be given a reasonable opportunity to observe the opening and testing of a 'B' sample is of sufficient importance that it needs to be enforced even in situations where all of the other evidence available indicates that the Appellant committed an anti-doping rule violation*” (CAS 2008/A/1607, para. 123 – disregarding B-sample results where the federation failed to make reasonable efforts to accommodate the athlete’s request to have her B sample opened and analyzed in the presence of her representative; *see also* CAS 2002/A/385, para. 29 – explaining that to do otherwise would be to treat the athlete “*as the object of the doping test procedure not its subject*”).
17. This right is “*completely taken away from the athlete when the analysis of the B- sample is conducted without the athlete ... being given due notification of the relevant date and time*” (CAS 2002/A/385, para. 29). Moreover, it is not possible to remedy such a procedural error through the course of the arbitral process. In contrast to violations of the athlete’s right to be heard, the “*arbitration cannot substitute the presence (in its widest definition) of a representative of the athlete at the opening of the B-sample*” (CAS 2002/A/385, para. 33). And where – as here – the rules establish a strict liability regime with respect to doping, “[*i*]t is of fundamental importance ... that the rules have been clearly followed” (CAS 2003/A/477, para. 29, citing CAS 94/129).
18. In the present case, it is undisputed that Respondent did not inform Appellant that it intended to have the B sample analyzed at all – much less inform her of where and when that analysis would take place – and it did not give Appellant an opportunity to attend the opening and analysis of her B sample in person or by way of a representative. Under these circumstances, her B-sample results must be disregarded. As a consequence, the analysis of Appellant’s B

sample cannot validly confirm the presence of clenbuterol found in Appellant's A sample and Respondent has therefore failed to establish an anti-doping violation under Article 2.1.2 of the 2009 IJF ADR.

19. In reaching this conclusion, the Panel rejects Respondent's argument that Appellant cannot complain about Respondent's failure to inform her of the B-sample analysis because she had waived her right to have her B sample analyzed. Even assuming *arguendo* that Appellant's waiver was valid (an issue the Panel does not need to decide), the conclusions of the Panel would not change. As discussed above (paras. 14-15), the athlete's right to be informed that her B sample will be analyzed and the time and place of the analysis – as well as her right to attend the opening and analysis in person or through a representative – applies regardless of whether it is the athlete or Respondent who requests testing of the B sample.
20. The Panel further rejects Respondent's efforts to distinguish this case from CAS 2008/A/1607 and CAS 2002/A/385. Respondent contends that those cases are not on point and do not support disregarding the results of Appellant's B-sample analysis because – unlike Appellant – the athletes in those cases had requested that their B samples be analyzed. Although Appellant here initially requested analysis of her B sample, Respondent contends that she later withdrew her request. The Panel finds this to be a distinction without a difference.
21. As a preliminary matter, and as noted above (paras. 14-15), under the relevant provisions of the 2009 IJF ADR Respondent must inform the athlete that her B sample will be analyzed and the time and place of the analysis. Respondent must also afford the athlete an opportunity to attend the opening and analysis in person or through a representative. And these rights apply regardless of whether it is the athlete or Respondent who requests analysis of the B sample. As a consequence, even assuming *arguendo* that Appellant validly withdrew her request to have her B sample tested, her withdrawal is not relevant because Respondent itself elected to have the B sample analyzed, triggering Appellant's rights to be informed and to be present. The principles articulated in CAS 2008/A/1607 and CAS 2002/A/385 apply to this case.
22. Moreover, where an athlete declines to have her B sample tested, Respondent has no need to have the B sample analyzed on its own initiative. This is because, as discussed above (paras. 11-12), where the athlete waives analysis of the B sample, and the B sample is not analyzed, Respondent can rely on the results of the A-sample analysis alone to establish an anti-doping violation under Article 2.1.2 of the 2009 IJF ADR. When Respondent nevertheless decided to exercise its own right to have the B sample tested, this triggered Appellant's rights. Respondent has never explained why it elected to open and test the B sample or why it did not inform Appellant.
23. The Panel likewise rejects Respondent's argument that Appellant should be estopped (*venire contra factum proprium*) from claiming that the B-sample analysis is invalid because she admitted that clenbuterol was detected in her A sample and only contended that the B-sample test was invalid after receiving notice of her two-year suspension (citing ATF 121 III 350 and ATF 119

- II 386). However, even assuming *arguendo* that Appellant validly admitted that clenbuterol was detected in her A sample (an issue we need not reach), Respondent's estoppel argument fails.
24. As a preliminary matter, the precedents Respondent cites either do not make reference to estoppel at all (ATF 119 II 386) or concern facts so dissimilar to the facts at issue here as to be unhelpful in the context of this case (cf. ATF 121 III 350 concerning the power of a sport's governing body to change its rules for selecting athletes for competition during the selection process).
  25. Moreover, there is nothing inconsistent about Appellant complaining that Respondent violated her rights by not informing her of its decision to have the B sample tested and inviting her to be present – something Appellant only learned after Respondent had already taken its decision to suspend her. If Respondent nevertheless decided to exercise its right to open and analyze the B sample, Appellant had the right to be informed and be present, as explained above (paras. 14-15).
  26. Further, Respondent has not even attempted to articulate how it could legitimately expect, in light of Appellant's admission concerning her A sample, that Appellant intended to waive her fundamental right to be informed and present were Respondent later to elect to test her B sample. Nor has Respondent even attempted to argue that it relied on Appellant's A-sample admission at all, much less that it relied on that admission to its detriment. On the contrary, Respondent demonstrably did not rely on Appellant's admission, but rather decided to have her B sample tested on its own initiative.
  27. Finally, as noted above, much later Respondent in its Answer offered Appellant the opportunity to have her B sample retested and invited the Panel to draw an adverse inference against Appellant should she decline Respondent's offer. Appellant declined Respondent's offer, and the Panel declines its invitation to draw an adverse interest against her for doing so. As explained above (¶ 0), Respondent's denial of Appellant's right to be present for the *opening* and analysis of her B sample cannot be remedied through the arbitral process because the seal on the B sample was already broken long ago in her absence.

## Conclusion

28. The Panel accordingly annuls Respondent's decision dated 4 April 2010 because Appellant was not given the opportunity to be present herself or by her representative for the opening and testing of her B sample in violation of Articles 7.1.4 and 7.1.6 of the 2009 IJF ADR.
29. Appellant had a fundamental right to be present whenever her B sample was analyzed, regardless of who asked for it.
30. Violation of this essential right renders the B-sample analytical results invalid.

31. As those results therefore cannot validly confirm the A-sample analytical results, Respondent has not established a doping violation pursuant to Article 2.1.2 of the 2009 IJF ADR.
32. As the Panel has decided to uphold Appellant's appeal and annul Respondent's decision dated 4 April 2010 on this basis, it is not necessary for the Panel to address any of Appellant's other grounds for appeal.
33. The Panel wishes to emphasize that the present decision in favor of the Appellant should not be interpreted as an exoneration of her. In particular, the Panel is not declaring that the Appellant did or did not, voluntarily or not, ingest clenbuterol. The Panel is merely concluding that the Respondent has not been able to prove, to the comfortable satisfaction of the Panel, diligent adherence to the rules set out in the applicable anti-doping regulations.
34. The Panel confirms that Appellant's results at the 2009 IJF World Championships are reinstated, she is to retain the gold medal won at those Championships and she is to be reinstated to sports participation with immediate effect.
35. Given the above conclusion and analysis, the Panel finds no reason to address the Parties' further arguments and considers unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

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

1. The appeal of Ms Tong is upheld.
2. The IJF's decision dated 4 April 2010 is annulled.
3. Ms Tong's results at the 2009 IJF World Championships are reinstated, she is to retain the gold medal won at those Championships and she is to be reinstated to sports participation with immediate effect.
- (...)
6. All other or further claims are dismissed.