SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

Nº: SDRCC DT 19-0316
(Doping Tribunal)

Between:

CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)
ATHLETICS CANADA

– and –

GRAEME THOMPSON

Athlete

– and –

GOVERNMENT OF CANADA
WORLD ANTI-DOPING AGENCY (WADA)

Observers

Tribunal :	Patrice Brunet (Sole Arbitrator)
Appearances:	
FOR THE CANADIAN CENTRE FOR ETHICS IN SPORT:	YANN BERNARD AND CATHERINE CAYER, COUNSELS
FOR GRAEME THOMPSON:	JAMES D. BUNTING AND CARLOS SAYAO, COUNSELS
FOR ATHLETICS CANADA :	SIMON NATHAN

REASONS FOR DECISION

I. INTRODUCTION

1. This arbitration was conducted under extraordinary time constraints as the *2019 IAAF World Championships* were scheduled to take place in Doha, Qatar, from September 27 to October 6, 2019, and Graeme Thompson (the "Athlete"), having been selected by Athletics Canada to represent Canada for this competition, was scheduled to travel on September 16, 2019.

2. On July 27, 2019, the Athlete submitted to an in-competition doping control during the *Canadian Track and Field Championships* in Montreal.

3. On September 12, 2019, the Athlete was notified of an Adverse Analytical Finding ("AAF") under Rule 7.3.1 of the 2015 Canadian Anti-Doping Program (the "CADP"). The notice stated that he had committed an anti-doping rule violation based on the sample provided on July 27, 2019.

4. The Canadian Centre for Ethics in Sport (the "CCES") certifies that the analysis of the sample provided by the Athlete revealed the presence of Tamoxifen and Clenbuterol.

5. **Clenbuterol** is an anabolic agent classified as a Prohibited Substance under the 2019 World Anti-Doping Agency Prohibited List ("2019 WADA Prohibited List"). **Tamoxifen** is a selective estrogen receptor modulator classified as a Specified Substance, under the 2019 WADA Prohibited List.

6. On September 12, 2019, the CCES imposed a Mandatory Provisional Suspension on the Athlete, pursuant to Rule 7.9.1 of the CADP.

7. The Athlete sought immediate urgent relief to lift the Provisional Suspension with immediate effect, in order to participate to the *2019 IAAF World Championships*.

II. THE PARTIES

8. The CCES is an independent, not-for-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the CADP, including the provision of anti-doping services to national sport organizations and their members. As Canada's national anti-doping organization, the CCES is in compliance with the World Anti-Doping Code ("the WADA Code") and its mandatory International Standards. The CCES has implemented the WADA Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the WADA Code and of the CADP is to provide protection for the rights of athletes to fair competition.

9. Athletics Canada is the national sport governing body for track and field, including cross-country running and road running.

10. Graeme Thompson is an international-level athlete who has been selected by Athletics Canada to participate in the Mixed 4x400m relay in the *2019 IAAF World Championships* in Doha, Qatar. He is included in the CCES National Athlete Pool (NAP).

11. The World Anti-Doping Agency ("WADA") is the international organization responsible for managing the World Anti-Doping Program which includes the WADA Code. WADA did not take part in the hearing.

12. The Government of Canada did not attend the hearing either.

III. FACTUAL BACKGROUND

13. The Athlete is a middle-distance runner based in Guelph. Based on Athletics Canada's website, it selected the Athlete on August 30, 2019 to represent

Canada for the *2019 IAAF World Championships* in Doha, Qatar for the Mixed 4X400m relay competition.

14. The Athlete has never committed an anti-doping rule violation previously.

15. Starting in March 2019, the Athlete began to consume a product bought on the Internet (on the website of retailer MediStar) known as T3 (triiodothyronine or cytomel). At the hearing, he testified having consumed between one and up to three tablets a day, as he prepared for the *Canadian Track and Field Championships* that took place in Montreal from July 24 to July 28, 2019.

16. On July 27, 2019, the Athlete submitted to an in-competition doping control.

17. On August 9, 2019, the CCES received an AAF from the *Institut national de la recherche scientifique – Institut Armand Frappier* ("INRS"), WADA's accredited laboratory, for Tamoxifen and Clenbuterol. They are classified as Prohibited Substances on the 2019 WADA Prohibited List[1]. The CCES initiated the procedural initial review process.

18. On August 15, 2019, the Athlete received notification of an AAF by the CCES, informing him that he had committed an anti-doping rule violation further to the doping control conducted on July 27, 2019.

19. The certificate of analysis of the Athlete's A sample indicated:

> *Clenbuterol (atypical finding, level roughly estimated to 0.2 ng/mL; may also be compatible with consumption of contaminated meat). Tamoxifen metabolites.*

20. During the initial review process, the Athlete requested the analysis of his "B" Sample which also confirmed the presence of Tamoxifen and Clenbuterol on September 10, 2019.

[1] Tamoxifen is classified as a Specified Substance on the 2019 WADA prohibited List.

21. On September 12, 2019, following the initial review process, the Athlete was notified by the CCES that he had committed an anti-doping rule violation pursuant to Rule 2.1 of the CADP. The CCES then imposed a mandatory Provisional Suspension in accordance with Rule 7.9.1 of the CADP since one of the Prohibited Substances was not a Specified Substance.

IV. PROCEDURAL BACKGROUND

A. Preliminary Stages

22. On September 11, 2019, the Athlete requested a Provisional Hearing with the SDRCC, under Rule 7.9.3 of the CADP to lift the Provisional Suspension in order to compete in the 2019 IAAF World Championships.

23. On September 12, 2019, I was appointed as Arbitrator.

24. On the same day, an administrative and a preliminary conference call was held at 4:40 p.m. (EDT) between the Parties, the SDRCC and the myself, to cover administrative procedures, preliminary matters and to plan the hearing.

25. On September 13, 2019, the Athlete and the CCES filed their respective written submissions.

B. The Hearing

26. As agreed by the Parties and confirmed by myself, the Provisional Hearing was held via conference call on September 13, 2019 from 7:00 p.m. to 10:00 p.m. (EDT).

27. Each party produced two witnesses: Messrs. Graeme Thompson and Steven

Overgaard were called by the Athlete, while Mr. Kevin Bean and Pr. Christiane Ayotte were called by the CCES.

C. Short Decision

28. On September 15, 2019, I issued a short decision, with the following conclusions:

> *In light of the evidence presented by the parties and the application of Rule 7.9.3.1 (d) of the CADP, all within considerable time constraints, I find that the Athlete met his burden of proof that the violation is likely to have involved a Contaminated Product. I will elaborate in my reasoned decision, but for the moment I am satisfied that the Athlete has met the requirements of Rule 7.9.3.1 (d) of the CADP.*

V. JURISDICTION

29. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19, 2003[2].

30. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sports community, among others, a national alternative dispute resolution service for sports disputes.

31. In 2004, the SDRCC assumed responsibility for all doping disputes in Canada.

32. All Parties have agreed to recognize the SDRCC's jurisdiction in the present matter.

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[2] *Physical Activity and Sport Act*, S.C. 2003, c.2.

VI. SUBMISSIONS

SUBMISSIONS FROM THE PARTIES

33. This section summarizes the oral and written submissions of the Parties, including the testimonies at the hearing. Although this is not a detailed record, I carefully examined all submissions and testimonies of each witness presented by the Parties.

A. The Athlete

34. Counsel for the Athlete claims that the Provisional Suspension must be lifted because the anti-doping rule violation is likely to have involved a Contaminated Product under the Rule 7.9.3.1 of the CADP.

35. Counsel submits that the presence of Tamoxifen and Clenbuterol in the Athlete's sample must be considered as a Contaminated Products case within the meaning of the definition provided in Appendix 1 of the CADP, mainly since the T3 product label did not disclose the presence of Clenbuterol or Tamoxifen, as evidenced by Exhibit R-04 b).

36. Counsel also claims that the Athlete conducted a reasonable Internet search by consulting GlobalDRO, which confirmed that T3 was not deemed unsafe.

37. DITEBA Laboratories Inc. ("DITEBA") is an independent company specialized in analytical and bioanalytical testing, responsible for testing in the pharmaceutical industry. The laboratory located in Mississauga is *Health Canada* approved and *Food and Drug Administration*-registered in the United States.

38. DITEBA was retained by the Athlete to complete a Preliminary Analytical Test Report, which was filed as evidence.

39. Mr. Steven Overgaard, the Chief Executive Officer of DITEBA, was called by the Athlete to testify.

40. As stated in Mr. Overgaard's test report, which was admitted as evidence, the results reported were preliminary and subject to confirmation.

41. DITEBA's laboratory performed a preliminary analysis on 20 (twenty) T3 tablets provided by the Athlete, for the presence of Clenbuterol, and 20 (twenty) tablets for the presence of Tamoxifen. All samples were provided by the Athlete. Half of the tablets that were tested were taken from an open package of T3 and half of the tablets originated from an unopened package. Half of the tablets were air-cleaned before testing and the other half were not.

42. The table below, presented in Mr. Overgaard's report (Exhibit R-04 a)), presents the results of the test conducted by DITEBA:

Results of Clenbuterol and Tamoxifen in T3 tablets

Package	Number of tablets tested	Air Cleaned	Range of Tamoxifen detected in tablets (µg/tab)	Range of Clenbuterol detected in tablets (µg/tab)
Opened	10	Yes	0.552 - 1.540	0.230 - 0.504
Opened	10	No	1.306 - 2.029	0.293 - 0.702
Unopened	10	Yes	Not Detected	0.203 - 0.445
Unopened	10	No	Not Detected	0.215 - 0.434

43. The Athlete's counsel also produced as evidence at the hearing the detailed results of the tests undertaken on each tablet analyzed and the amount of

Clenbuterol and Tamoxifen found in each tablet (Exhibits R-05 a) and R-06).

44. Mr. Overgaard testified that the T3 tablets may have been contaminated due to poor quality-control practices in the manufacturing or packaging of the T3 tablets.

45. Based on Mr. Overgaard's testimony and report, counsel submits that the Athlete's suspension must be lifted since the violation is likely to have involved a Contaminated Product.

46. Counsel suggested that the standard of proof applicable to CADP Rule 7.9.3.1(d) is lower than the balance of probabilities, referring to a prior confidential decision (the "Confidential Decision") that I rendered on the interpretation of the same CADP Rule. The Confidential Decision was rendered before the same counsel and the CCES, and I received assurance that reference to this decision preserved the confidential character of the Parties therein (i.e. the Confidential Decision or the name of the Athlete who was involved would not be shared with the Athlete nor the NSO in the present proceedings).

B. The CCES

47. The CCES submitted that the Athlete has committed an anti-doping rule violation further to the AAF involving a Prohibited Substance and therefore a Provisional Suspension should be imposed on the Athlete.

48. The CCES claims that the Athlete has not met the onus of proof under Rule 7.9.3.1 and therefore the mandatory Provisional Suspension cannot be lifted.

49. The CCES submits that the definition of *Contaminated Product*, as found in the CADP, was not met. The CCES suggests that, in order to establish the

presence of a Contaminated Product, the Athlete must satisfy the Tribunal on both criteria of the definition. Even if the Athlete was able to establish that the product is likely to have been contaminated, the CCES states that the Athlete did not discharge himself of his obligation to conduct a reasonable Internet search.

50. The CCES states that, had the Athlete conducted a reasonable Internet search, he would have quickly realized that the T3 product was at risk of containing a Prohibited Substance, since the manufacturer openly sells steroids and other Prohibited Substances.

51. To support this statement, the CCES invited Mr. Kevin Bean, the CADP's Senior Manager, to testify, and produced his statement as evidence. He stated that, with a reasonable search on the T3 product, the Athlete should have noticed that it was linked to websites that relate to steroids, doping or bodybuilding. Considering the Athlete's anti-doping training, provided by the CCES, and knowledge about risks using supplements, the T3 product from Medistar's website, the retailer, should have raised significant red flags.

52. The CCES' position on the Athlete's interpretation of the definition of a Contaminated Product, where he would only need to prove one of the two (2) criteria contained in the definition, and not both, would be unfair and inconsistent with the purpose of the CADP and the anti-doping regulations.

53. If this interpretation of Rule 7.9.3.1 d) of the CADP was allowed, the CCES claims that any athlete could avoid a suspension without the need to prove that he has conducted a reasonable search on the Internet, as long as the Prohibited Product is not disclosed on the product label. It would then be sufficient to meet the definition of a Contaminated Product, and to lift almost automatically any Provisional Suspension, even if the product was bought from a questionable online source.

54. For these considerations, the CCES states that the T3 product does not meet the definition of a Contaminated Product, within the meaning of Appendix 1 of the CADP.

55. The CCES also claims that the Athlete has not successfully established that contamination is likely to have been the cause of the anti-doping rule violation.

56. As counter evidence to Mr. Overgaard's testimony and report, the CCES filed Pr. Ayotte's opinion and testimony at the hearing.

57. Pr. Ayotte is the INRS' director of doping control and professor. She obtained her Ph.D. degree in Organic Chemistry from the University of Montreal in 1983. She also completed postdoctoral studies in mass spectrometry.

58. During her testimony at the hearing, and as stated in her opinion, she noticed that the T3 product, as tested by DITEBA, did not return results of the contamination for Tamoxifen and Clenbuterol in both bags that were tested.

59. In addition, the levels of Clenbuterol and Tamoxifen found in the Athlete's samples were considerably over the limit of detection. She also considers the T3 as an untrustworthy product due to its origin, which was linked to Internet bodybuilding websites selling anabolic steroids and hormones.

60. Considering the nature of the substances identified in the product, the difference between the closed and open packages, the nature and origin of the T3 product, the absence of elements proving its source and acquisition, Pr. Ayotte suggests that the presence of Tamoxifen and Clenbuterol in the T3 Product could also have been the result of a deliberate addition. She also testified that the product that was tested should have been sourced independently, not by the Athlete.

61. In the CCES' opinion, the Athlete was not able to establish that the Tamoxifen and Clenbuterol found in his samples met the definition of a Contaminated

Product, within the meaning of Appendix 1 of the CADP. In addition, the Athlete did not meet his onus of proof that the anti-doping rule violation is likely to have involved a Contaminated Product. For these reasons, the CCES' position is that the Provisional Suspension shall be maintained.

VII. APPLICABLE RULES

Canadian Anti-Doping Program (CADP)

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any 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; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

[…]

7.9 Provisional Suspensions

7.9.3 Where a Provisional Suspension is imposed pursuant to Rule 7.9.1 or Rule 7.9.2, the Athlete or other Person shall be given either:

a) an opportunity for a Provisional Hearing either before or on a timely basis after imposition of the Provisional Suspension;

[…]

7.3.9.1 A Provisional Suspension imposed pursuant to Rule 7.9.1 or 7.9.2 shall not be lifted unless the Athlete or other Person establishes that:

[…]

d) the violation is likely to have involved a Contaminated Product. The Doping Tribunal's decision at a Provisional Hearing not to lift a Provisional Suspension on account of the Athlete's assertion regarding a Contaminated Product shall not be appealable.

[Emphasis added]

10.1 Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Rule 10.1.1. Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.

10.8 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Rule 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

10.11 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

APPENDIX 1 DEFINITIONS

***Contaminated Product**: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.*

[Emphasis added]

VIII. DISCUSSION

62. Considering the extremely short delay under which the Provisional Hearing took place, I must say that I am pleased with the submissions and evidence I received from both Parties in the circumstances. Everyone collaborated professionally and diligently to achieve this outcome in most extraordinary circumstances.

63. After considering all the evidence, I was asked to determine whether the anti-doping rule violation was *likely* to have involved a *Contaminated Product* under Rule 7.9.3.1 (d) of the CADP.

64. Most importantly, I was asked to render a decision on a matter that was prepared by Parties within a very short time span. In those circumstances, as happens in urgent matters such as those seeking injunctive relief, my review of the evidence, while thorough, does not require the same standard of review as that which addresses the merits of a case. This is consistent with the wording of the CADP and these special circumstances.

65. First, I need to determine whether the products involved in the violation meet the definition of a *Contaminated Product* within the meaning of Appendix 1 of the CADP. Then, I need to establish whether a causal relation exists between the anti-doping rule violation and the Contaminated Product, and the standard of proof found in Rule 7.9.3.1 (d) of the CADP.

66. The definition of Contaminated Product under the CADP reads as follows: *A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search*. [Emphasis added]

67. The Athlete has the onus to demonstrate that Clenbuterol and Tamoxifen: (i) were not disclosed on the T3 product label; or (ii) in information available in a reasonable Internet search.

68. As stated in the 2019 WADA Prohibited List and as recognized by the parties, Clenbuterol and Tamoxifen are Prohibited Substances. Tamoxifen is classified as a Specified Substance.

69. As evidenced by the pictures submitted by the Athlete in his submissions, the Prohibited Substances in question were not disclosed on T3's product label. I am satisfied with the evidence presented by the Athlete. In these circumstances, I am led to conclude that we are in presence of a Contaminated Product within the meaning of the definition of Appendix 1 of the CADP.

70. In order to meet the definition of a Contaminated Product, the CCES submits that the Athlete must meet both criteria: that the Prohibited Substance is not disclosed on the product label and in information found in a reasonable Internet search. I do not agree with this claim.

71. While I respect the CCES' view that meeting only one of the criteria, instead of both, could potentially lead to a much wider defense strategy from willingly doping athletes, I am bound by what the CADP drafters have written. The CADP is clear and there is no ambiguity in both the French and English versions: the definition of a Contaminated Product is met, even if only one of the criteria is satisfied. Had the drafters' intention been to make both criteria cumulative, they would have chosen the conjunctive *and* instead.

72. Taking a step back, I don't believe that my interpretation opens as wide a door to potential doping abuse, or abusive legal defense strategy, as the CCES purports. Hypothetically going down this route, an Athlete who would consume a contaminated product with no mention of Prohibited Substances on its label would be able to raise a defense anchored with the Contaminated Product strategy. However, the arbitrator hearing the case on the merits would still need to be satisfied that the Athlete discharged his obligations dutifully under Rule 10.5 of the CADP, including the completion of a reasonable Internet search. The degree of fault would then be analyzed under this scope, and the arbitrator would make his/her own determination based on the submitted evidence.

73. Does this open too easy a door to seek a Provisional Hearing on the mandatory suspension? I don't believe so. In the presence of a mandatory suspension, the checks and balances are already built-in as the Athlete needs to carefully assess his options before seeking a Provisional Hearing: the outcome of a successful Provisional Hearing for the Athlete means that, if later found to have committed an anti-doping rule violation on the merits, his

period of suspension will begin at a later date and his results and prize money will be retroactively forfeited to the date of the collection of the sample. On the other hand, if he is successful on the merits, then he will not have lost his opportunities to compete, in the presence of a true Contaminated Product situation. I believe this strikes a fair balance between the fight against cheaters and dopers, and athletes' rights in their ability to pursue their career if their nutrition is contaminated.

74. I am also lucidly aware that, should the Athlete be then found on the merits to have committed an anti-doping rule violation, his results at the upcoming World Championships would be annulled, which would, in turn, have an impact on his teammates competing with him in the 4X400m relay. However, I am satisfied that the language of Rule 10.8 of the CADP provides sufficient discretion to ultimately consider his teammates' interests.

75. Because of the built-in discretion in Rule 10.8, I was able to make the present determination without distraction, solely as envisioned by the drafters of the CADP, in the presence of the likelihood of a Contaminated Product ingested by the Athlete.

76. At the stage of the Provisional Hearing, as an arbitrator, I could not take into consideration all of the arguments suggested by the CCES. This will be analyzed in greater detail on the merits.

77. I will now focus on the standard of proof applicable under Rule 7.9.3.1 (d) and whether the evidence submitted by the Parties met this threshold. The live issue, in the present case, is whether the violation is *likely* to have involved a Contaminated Product.

78. After considering the evidence and the testimonies of the witnesses at the hearing, I am satisfied that the anti-doping violation is *likely* to have involved a Contaminated Product under Rule 7.9.3.1 (d).

79. In the context of the Provisional Hearing, under extraordinary time constraints, the Athlete's burden of proof is considered to be lower than when heard on the merits.

80. I have previously stated in the Confidential Decision that the applicable threshold to meet, when determining whether the violation is likely to have involved a Contaminated Product at the stage of the Provisional Hearing, is as follows:

> 105. The text of paragraph (d) sets the threshold of evidentiary standard quite low because in the context of a Provisional Hearing, all the tribunal needs to establish or to be convinced of is whether the violation is likely to have involved a Contaminated Product.
>
> 106. The Athlete bears the burden of establishing that the alleged anti-doping rule violation likely involves a Contaminated Product.
>
> 107. Since we were in the context of a Provisional Hearing, under extraordinary time constraints, the athlete's burden of proof is not that of a balance of probabilities. The threshold of *likely* is certainly among the lowest evidentiary thresholds we can find. Above this threshold, we find the *balance of probabilities*, then finally *beyond reasonable doubt*, the latter not being applied in anti-doping regulations.

81. I still agree with my previous interpretation rendered in the Confidential Decision, but I will elaborate further.

82. In the decision *Merck Frosst Canada Ltd*. v. *Canada (Health)*, [2012] 1 S.C.R., the Supreme Court of Canada has defined the standard of proof of *likely* as follows: *likely, a standard considerably higher than mere possibility, but somewhat lower "than more likely than not"*[3].

83. Following these findings, on the scale of the standard of proof, a *mere possibility* represents the very lowest standard. The threshold of *likely* follows by a superior degree of conviction, but still remains lower than the balance of

[3] *Merck Frosst Canada Ltd.* v. *Canada (Health),* [2012] 1 S.C.R., par. 203

probabilities. The balance of probabilities requires that a fact is more likely than not to occur. Finally, on the highest scale, we find a reasonable doubt.

84. Visually, standard of proof thresholds may look like this, ranging from lowest to highest:

    a. Mere possibility
    b. Possibility
    c. Likely
    d. More likely than not
    e. Balance of probabilities
    f. Beyond a reasonable doubt
    g. Without a doubt

85. DITEBA'S report and Mr. Overgaard's testimony have sustained the Athlete's position and the likelihood of the presence of a contaminated product. Although the results are preliminary and may be subject to further review, Mr. Overgaard has demonstrated, in a credible manner, that the Tamoxifen and Clenbuterol found in the T3 may have been the consequence of poor quality-control practices.

86. At the stage of the Provisional Hearing, I found that the T3 laboratory analysis by DITEBA was credible. The test methods and the examination of opened and unopened packages, and the airbrush process have strengthened the athlete's claim by demonstrating the presence of Clenbuterol in both opened and unopened packages, while Tamoxifen was also found, but only in the opened package. These preliminary results lead me to make these observations. Mr. Overgaard's Preliminary Analytical Test Report submitted by the Athlete allows the credible position that there may have been a causal link between the Contaminated Product used by the Athlete, and the violation of the anti-doping rule which satisfies me that it is likely that the Athlete ingested a Contaminated Product.

87. I considered Pr. Ayotte's opinion and testimony, where she suggested interesting theories regarding the level of contamination of Clenbuterol and Tamoxifen that were detected in the Athlete's sample, including the fact that he did not mention that he was using the T3 product on his doping form and that the presence of a Prohibited Substance may be the result of a deliberate addition. While I do not dismiss those opinions, I did not attribute significant importance to them, since they should more appropriately be argued on the merits. In the absence of credible evidence to question the credibility of DITEBA'S report and the likelihood of contamination of the product, I am bound to rely on the Athlete's position, which was made under oath.

88. I have found that the evidence before me went beyond the threshold of possibility and reached the threshold of likelihood, meeting the definition of the CADP.

89. At the stage of the preliminary hearing, the evidence is satisfactory to establish that the violation of the anti-doping rule is *likely* to have involved a *Contaminated Product.*

90. Given the exceptionally short delays under which these proceedings were conducted, I make no findings nor inferences on the merits of a possible AAF, which may be properly addressed by the Tribunal, should this matter proceed further on the merits.

IX. DECISION

91. CONSIDERING the documentary evidence and the testimonies given during the hearing:

92. In accordance with Rule 7.3.9.1 (d) of the CADP, I am satisfied that the alleged anti-doping violation is likely to have involved a Contaminated Product.

93. Consequently, the CCES is barred from imposing a Provisional Suspension on the Athlete.

Signed in Montreal, on October 3rd, 2019

Patrice Brunet, Arbitrator