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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

June 20, 2016

Sir Craig Reddie, CBE
President, World Anti-Doping Agency
Stock Exchange Tower
800 Place Victoria, Suite 1700
Montreal, Q.C., H4Z 1B7
Canada

Dear Sir Craig:

I am writing today to request information about the World Anti-Doping Agency's (WADA) actions to investigate and address allegations of an elaborate state-sponsored doping program in Russia. Because clean competition is central to fairness in sport and bears directly on the health and safety of athletes, a strong and credible WADA is indispensable. Unfortunately, these recent allegations, and WADA's subsequent response, have called the organization's strength and credibility into question. While the November 2015 report of the WADA-established Independent Commission (IC)¹ and subsequent addenda² confirmed the allegations, more must be done. Specifically, WADA must explain its delay in investigating this matter. It must heed the calls from athletes and others to expand the scope of the ongoing investigation to include additional sports, other countries, and previous games. And, WADA must address claims that it lacks the procedures and independence to fulfill its mission to lead a collaborative worldwide movement for doping-free sports.

The U.S. government, through the Office of National Drug Control Policy (ONDCP) from fiscal year 2003 to date, has contributed more than \$25 million to WADA in the form of dues to "protect athletes' fundamental rights to participate in drug-free sports, and thus promote the health and safety of athletes at all levels."³

The U.S. Senate Committee on Commerce, Science and Transportation, of which I am the Chairman, has legislative and oversight jurisdiction over sports.⁴ The Committee has a long history of supporting athlete health and safety and ensuring fair competition, both in amateur and

¹ FINAL REPORT OF THE INDEPENDENT COMMISSION (Nov. 2015), https://wada-main-prod.s3.amazonaws.com/resources/files/wada_independent_commission_report_1_en.pdf

² INDEPENDENT COMMISSION REPORT #2 (Jan. 2016), https://wada-main-prod.s3.amazonaws.com/resources/files/wada_independent_commission_report_2_2016_en_rev.pdf.

³ Exec. Off. of the President, Nat'l Drug Control Strategy: FY 2016 Budget and Performance Summary, 11 (Nov. 2015), https://www.whitehouse.gov/sites/default/files/ondcp/policy-and-research/fy_2016_budget_summary.pdf.

⁴ See S. Comm. on Rules & Admin., Standing Rules of the Senate, Rule XXV(f)(1), S. Doc. No. 113-18, at 22 (2013).

professional sports. The Committee reported the Ted Stevens Olympic and Amateur Sports Act⁵ that established the U.S. Olympic Committee. It also established and recently reauthorized the United States Anti-Doping Agency⁶ and actively oversees the work of that organization. Historically, the Committee has played a leading role investigating allegations of doping in sports, and has held cheating American athletes to public account regardless of whether they represent the United States in international events or compete in American professional leagues.

WADA must explain its delay in addressing allegations of Russian State-Sponsored Doping Program.

Media reports⁷ have alleged, and Committee staff has independently confirmed, that WADA was made aware of allegations of widespread government-sanctioned doping among Russian athletes in February 2010. However, WADA did not set up the IC to investigate these claims until December 2014, and it did not incorporate the terms of reference for this commission until January 2015.⁸

A WADA spokesman has claimed that the agency did not have authority to conduct investigations.⁹ However, the World Anti-Doping Code (the Code), WADA's charter document in effect since 2004, sets forth the agency's broad authority to investigate violations. It states that an "Anti-Doping Organization," which is defined as including WADA, shall "conduct any follow-up investigation into a possible anti-doping rule violation as may be required under applicable anti-doping policies and rules adopted pursuant to the Code *or which [WADA] otherwise considers appropriate.*"¹⁰ The Code requires WADA to "conduct doping controls as authorized by other anti-doping organizations and to cooperate with relevant national and international organizations and agencies, including but not limited to, facilitating inquiries and investigations."¹¹

WADA has previously confirmed its authority to investigate anti-doping rule violations and to collaborate with law enforcement conducting criminal investigations on many prior occasions, predating 2015.¹² Moreover, WADA's excuse for its long delay in aggressively investigating

⁵ Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501-220512, 220521-220529 (2014).

⁶ United States Anti-Doping Agency Reauthorization Act, Pub. L. 113-280, 128 Stat. 3020 (2014).

⁷ See Will Hobson, *Alerted to doping in '10, WADA didn't investigate*, WASH. POST, June 3, 2016, at A1.

⁸ Press Release, World Anti-Doping Agency, WADA announces details of Independent Commission (Dec. 16, 2014), <https://www.wada-ama.org/en/media/news/2014-12/wada-announces-details-of-independent-commission>; WADA, Independent Commission – Terms of Reference (Jan. 16, 2015), <https://wada-main-prod.s3.amazonaws.com/wada-independent-commission-terms-of-reference-2015-jan-en.pdf>.

⁹ *Id.* ("WADA spokesman Ben Nichols said his agency's rules did not grant it the authority to conduct investigations until January 2015. 'In simple terms, it came down to the fact that we, as an organization, didn't have any investigative powers,' said Nichols, who did not dispute the basic facts of Stepanov's story.")

¹⁰ WADA Code, Rule 7.4 at 44 (2009 ed.) (emphasis supplied).

¹¹ WADA Code, Rule 20.7.8 at 112 (2009 ed.).

¹² See, e.g., World Anti-Doping Agency, Coordinating Investigations and Sharing Anti-Doping Information and Evidence at 11, https://wada-main-prod.s3.amazonaws.com/resources/files/WADA_Investigations_Guidelines_May2011_EN.pdf (2011) (WADA Investigation Guidelines stating that agency "has led by example on [the] issue [of investigations], [through]

these allegations overlooks the fact that the evidence WADA received from the whistleblowers centered on allegations of corruption at the WADA-accredited anti-doping laboratory in Moscow and at the Russian national anti-doping agency, both of which are under WADA's direct oversight.

WADA has also sought to justify its delay in investigating these allegations out of concern for the whistleblowers' personal safety.¹³ Rather than justifying a delay, this instead raises questions as to whether WADA has adequate policies in place to solicit information about rule violations from sources with knowledge of such violations and to protect whistleblowers from retaliation when they come forward—something that should be one of WADA's core functions.

WADA's inquiry has been too narrowly focused on Track and Field and the Sochi Games.

In addition to confirming the allegations about Russian track and field, the IC report also found "reliable indications that sports in Russia, other than [track and field], are affected by doping," but declined to investigate further, stating that it considered such additional inquiry to be outside its Terms of Reference.¹⁴ Information obtained by the Committee indicates that other sports are implicated, and that the Russian program likely included all sports in which doping would provide a competitive benefit to Russian athletes.

While WADA published an addendum to the IC's Terms of Reference in August 2015, to cover new allegations of doping that aired on German television in December 2014, the investigation remained focused on track and field and the role of the International Association of Athletics Federations, the sport's governing body. The scope of the IC's investigation, to date, is limited to Russian track and field. A parallel WADA investigation, conducted by Richard McLaren, is examining Russian athletes that competed in Sochi. It remains unclear, however, what additional sports implicated in the IC report will be investigated.

WADA should heed athlete calls to broaden the scope of investigation.

Numerous athletes have criticized the limited scope of WADA's investigation. In January 2016, Sarah Konrad, the Chair of the USOC Athlete's Advisory Council petitioned WADA to take additional steps to ensure a fair field of play for athletes in all sports, not just those who compete in Track and Field, stating that "a full investigation should be carried out into the failed testing of Russian athletes from ALL sports."¹⁵

entering into a cooperation agreement with Interpol . . . [which is intended] to facilitate the exchange of information and expertise" between WADA and Interpol").

¹³ See Steve Keating, *WADA says it did not drag its feet on Russian whistleblowers*, REUTERS, June 3, 2016, <http://www.reuters.com/article/us-sport-doping-whistleblowers-idUSKCN0YP2NF> ("Olivier Niggli, who will take over as WADA director general later this month, forcefully hit back at that criticism on Friday explaining the top priority was to protect the Stepanovs, who were in fear for their lives and that the anti-doping agency was being prudent rather than slow.").

¹⁴ FINAL REPORT OF THE INDEPENDENT COMMISSION, *supra* note 1, at 310.

¹⁵ Letter from Sarah Konrad, Chair, U.S. Olympic Comm. Athletes' Advisory Council, to Thomas Bach, President, Int'l Olympic Comm. & Sir Craig Reedie, President, World Anti-Doping Agency, Jan. 25, 2016 (emphasis in original) (on file with Committee staff).

In March 2016, the Chair of WADA's Athletes' Committee, Beckie Scott, wrote to you to express the Athlete's Committee's view that the investigation has been "unsatisfactory" and requested that WADA extend the mandate of the IC to sports in Russia other than track and field.¹⁶

These calls to broaden the scope of WADA's investigation seem even more reasonable given the recent allegations made by the former director of the Moscow Laboratory, Grigory Rodchenkov, and reported by the *New York Times*, that describe the whole spectrum of Russian sport as "tainted by banned substances."¹⁷

While it is encouraging that, in May 2016, WADA appointed Mr. McLaren to conduct an independent investigation into the Sochi allegations made by Dr. Rodchenkov, it is disappointing that the Terms of Reference of Mr. McLaren's investigation do not expressly include any inquiry into doping in other sports beyond track and field and the 2014 Winter Olympic Games in Sochi.

WADA's inquiry should look back further than the 2014 Winter Olympics.

While the Terms of Reference for the IC's investigation do not specify a relevant time period, the IC report focuses mainly on the period between 2008 and 2014, and does not include any discussion of allegations of doping prior to 2006.

In its own interview with a Russian whistleblower, the Committee heard allegations that Russia has sponsored its doping program for much longer, and that the program's history may extend as far back as 30 years, administered throughout by Dr. Sergey Nikolaevich Portugalov, who is now the current Chief Medical Officer for the All-Russian Athletics Federation. More specifically, the whistleblower alleged the existence of a "Vancouver List," similar to the Sochi list currently under investigation by Mr. McLaren.

WADA's inquiry should expand beyond Russia.

The scope of WADA's inquiry is focused solely on Russia. In its report, the IC wrote that:

Although the IC report and recommendations are confined to Russia and athletics, the IC wishes to make it clear that, in its considered view, Russia is not the only country, nor athletics the only sport, facing the problem of orchestrated doping in sport.¹⁸

¹⁶ Letter from Beckie Scott, Chair, World Anti-Doping Agency Athlete's Comm., to Sir Craig Reedie, President, World Anti-Doping Agency, March 11, 2016 (on file with Committee staff).

¹⁷ Rebecca Ruiz & Michael Schwartz, *An insider in Sochi tells how Russia beat doping tests*, N.Y. TIMES, May 13, 2016, at A1.

¹⁸ FINAL REPORT OF THE INDEPENDENT COMMISSION, *supra* note 1, at 35

Notwithstanding this acknowledgment, the IC declined to investigate further, stating that it considered such additional inquiry to be outside its Terms of Reference.¹⁹ Nevertheless, the IC's view that state-sponsored doping extends beyond Russia is consistent with reports indicating that a retesting of samples from the 2008 Summer Olympic Games in Beijing has led the International Olympic Committee (IOC) to consider banning up to 31 athletes representing 12 countries and competing in six sports.²⁰

Since the IC report was issued, there have been calls for further action. In her March 2015, letter Ms. Scott expressed the WADA Athlete's Committee's position that WADA should extend the mandate of the IC to other countries.²¹ Despite these calls, WADA's inquiry to date has remained narrowly focused on Russia.

WADA Independence

Finally, the Committee is aware of concerns that WADA lacks the independence to fulfill its mission. WADA's governing rules allow its board members also to serve in an executive capacity for sports organizations, which could give rise to conflicts of interest. For example, not only do you serve as the President of WADA, but you are also an IOC Vice President. Further, WADA's mission to promote doping-free sport may be undermined since its leadership has ties to National Olympic Committees (NOCs) or sports ministries whose goal is to increase a particular nation's competitiveness and medal counts.

The mission of the IOC is, among other things, to promote sport and competition, to cooperate with public and private organizations to advance the Olympic movement, and to engage in the fight against doping.²² The IOC's most recent Annual Report states: "The values promoted by the Olympic Movement will be respected only if the organisation demonstrates credibility. As the leader of the Olympic Movement, the IOC has to be an example and act as a role model in this regard."²³ A truly independent WADA is essential to the IOC's mission to demonstrate credibility on the world stage.

Pursuant to the Committee's oversight authority, please provide responses to the following:

- 1) What accounts for the delay, from 2010 to 2014, before WADA began to investigate the allegations of state-sponsored doping among Russian athletes, especially in light of the fact that WADA had clear authority to do so under WADA Code Rule 7.4 and WADA Code Rule 20.7.8?

¹⁹ *Id.* at 310.

²⁰ Will Hobson, *IOC doping crackdown could lead to athlete bans*, WASH. POST, May 18, 2016, at A1.

²¹ Letter from Beckie Scott, *supra* note 16.

²² Int'l Olympic Comm., The Organisation, <https://www.olympic.org/about-ioc-institution> (last visited June 20, 2016).

²³ Int'l Olympic Comm., IOC Annual Report 2014 at 111, https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/IOC-Annual-Report/IOC-Annual-Report-2014.pdf#_ga=1.231927327.1283671525.1455292546.

- 2) Describe WADA's procedures and policies to accept information from whistleblowers, including details on resources available to the agency to protect whistleblowers from retaliation. If WADA does not have such procedures and policies in place, please explain why current authority does not provide these protections for whistleblowers.
- 3) Describe WADA's current authority and intentions to investigate allegations:
 - a. Of state-sponsored doping programs beyond Russian sponsored doping;
 - b. In other sports beyond Track and Field; and
 - c. In the time period prior to the Sochi Olympics.
- 4) Explain whether your board seat on IOC creates a conflict of interest with your duties as WADA president.
 - a. What steps have you taken to avoid any actual or apparent conflict of interest during your time as both WADA president and as an IOC vice president?
 - b. Have you signed an ethics agreement with WADA that describes the steps you will take to avoid any actual or apparent conflict of interest? If so, please provide a copy of that ethics agreement.
 - c. Have you participated personally and substantially as WADA president in any particular matter in which you know that IOC has a financial interest directly and predictably affected by the matter? If so, describe your role in such matters and whether you received a written waiver from WADA to participate in such matters.
 - d. What have you done to ensure WADA members' ties to NOCs do not create a real or apparent conflict of interest?
 - e. Provide a copy of WADA's conflict of interest policy.
- 5) What is the state of implementation of the 18 recommendations with respect to WADA that were issued in the IC's November 2015, report?

Sir Craig Reddie
June 20, 2016
Page 7

Please provide the requested information as soon as possible, but no later than July 5, 2016. In addition, please arrange for your staff to brief Committee staff on this issue. If you have any questions, please have your staff contact Peter Feldman of the Commerce Committee's Majority staff at (202) 224-1251. Thank you in advance for your prompt attention to this matter.

Sincerely,



JOHN THUNE
Chairman

cc: The Honorable Bill Nelson
Ranking Member