

**DECISION 2019/03**

**OF THE**

**BADMINTON WORLD FEDERATION**

**DOPING HEARING PANEL DECISION**

**DEFENDANT:** Ms. Ratchanok Intanon (BWF ID 35642)

**PANEL:** Mr. Rune Bård Hansen (Chair)  
Prof. Dr Toni Graf-Baumann  
Mr. James Kitching

**DATE:** 4 October 2019

Regarding alleged violations of the:

*Badminton World Federation Anti-Doping Regulations (revised 25 May 2017)*

## PRELIMINARY MATTERS

### Introduction

1. On 25 June 2019, Mr. Rune Bård Hansen (“**Hansen**”), the Chair of the Badminton World Federation (“**BWF**”) External Judicial Experts Group (“**EJEG**”), selected two (2) other members of the BWF EJEG to constitute a three (3) member hearing panel in accordance with Article 7.1.2 of the BWF Anti-Doping Regulations (revised 25 May 2017) (**AD Regulations**) to act as a Doping Hearing Panel:
  - 1.1. Mr. Rune Bård Hansen as Chair (“**Chair**”); and
  - 1.2. Prof. Dr. Toni Graf-Baumann and Mr. James Kitching as Members (“**Members**”)  
  
(together referred to as the “**Panel**”).
2. The Panel was appointed by Hansen to decide on a case involving potential breaches of the AD Regulations allegedly committed by the Thai badminton athlete Ms. Ratchanok Intanon (BWF ID 35642) (“**Intanon**”).
3. On 2 September 2019, the Panel unanimously decided, after reviewing the written submissions of Intanon and the BWF, that no oral hearing was necessary in accordance with Article 8.1.3 of the AD Regulations.

### Parties

4. The parties to these matters are:
  - 4.1. BWF, the international governing body for the sport of badminton, recognised by the International Olympic Committee (“**IOC**”); and
  - 4.2. Intanon, a Thai badminton athlete registered with the BWF since 2009, who is currently ranked world number six (6) for women’s singles.

### Procedural and Factual Chronology

5. This section provides an outline of the key communications and procedural rulings which occurred prior to the final hearing. Not all communications are recorded for reasons of relevance.

### Doping Control

6. On 18 April 2019, out of competition, Intanon provided a urine sample (“**Sample**”) to a doping control officer (“**DCO**”) from Professional Worldwide Controls (“**PWC**”).
  - 6.1. The Sample was split into two (2) separate bottles with the reference numbers A-4655217 (“**A Sample**”) and B-4655217 (“**B Sample**”).
  - 6.2. Intanon signed a doping control form (“**Form**”) where she:
    - 6.2.1. declared to have consumed “*Mineral drink*”; and

- 6.2.2. confirmed that the procedure for urine testing was “*all good*” and she had no further comments.
7. On 23 April 2019, the A Sample and B Sample were transported to the Institute of Doping Analysis and Sports Biochemistry (“**IDAS**”), a World Anti-Doping Agency (“**WADA**”) accredited laboratory in Dresden, Germany, for testing in accordance with the procedures set out in the WADA International Standard for Laboratories (“**ISL**”).
8. On 6 May 2019, IDAS provided its report on the A Sample (“**A Sample Report**”) which found an adverse analytical finding (“**AAF**”) for clenbuterol.
- 8.1. Under the section “*Details concerning Finding*”, IDAS stated:
- “Clenbuterol was found in this sample at an estimated concentration of 0.04 ng/mL which is below the MRPL of 0.2 ng.mL (WADA TD2018MrPL)...it is possible that under certain circumstances the presence of a low level of clenbuterol in an athlete sample can be the result of food contamination.”*
- 8.2. Clenbuterol is listed under “*S1.2 Other Anabolic Agents*” on the WADA 2019 Prohibited List.

#### Notice of Charge

9. On 12 June 2019, the BWF formally notified Intanon (**Charge Notice**) *inter alia*:
- 9.1. of the AAF in the A Sample Report and her right to have the B Sample analysed;
- 9.2. that according to BWF records, she did not have a Therapeutic Use Exemption (“**TUE**”) to justify the presence of clenbuterol in her system;
- 9.3. she was charged with a violation of:
- 9.3.1. Article 2.1 of the AD Regulations for the presence of clenbuterol in her A Sample;
- 9.3.2. Article 2.2 of the AD Regulations for use of clenbuterol;
- 9.4. that the BWF will assert a period of ineligibility of four (4) years for her anti-doping rule violation (“**ADRV**”);
- 9.5. to provide an explanation for the AAF by midnight on 23 June 2019 (Kuala Lumpur time) failing which she would be provisionally suspended from participating in any BWF-sanctioned competition prior to the rendering of a final decision, in accordance with Article 7.9.1 of the AD Regulations; and
- 9.6. to complete the Response Form.
10. The A Sample Report, AD Regulations, WADA 2019 Prohibited List and Response Form were provided with the Charge Notice.

11. On 14 June 2019, the Badminton Association of Thailand (“**BAT**”) returned the Response Form signed by Intanon which:
  - 11.1. requested for the B Sample to be analysed;
  - 11.2. provided a description of the meals she had consumed in the periods 4-7 April 2019 and 13-18 April 2019; and
  - 11.3. suggested that she was a victim of “*meat contamination*”.

Preliminary Investigation and Provisional Hearing

12. On 18 June 2019, in response, the BWF wrote to Intanon and:
  - 12.1. sought confirmation whether she had elected to deny the charges as it was not expressly stated on the Response Form;
  - 12.2. informed that the B Sample analysis would take place at IDAS where her samples were stored;
  - 12.3. noted her explanation and requested further evidence by 30 June 2019;
  - 12.4. advised her to seek legal counsel; and
  - 12.5. informed her that a Doping Hearing Panel will decide whether to impose a provisional suspension and final hearing as to the merits of the case.
13. On 27 June 2019, counsel for Intanon:
  - 13.1. provided a signed power of attorney;
  - 13.2. submitted a copy of the WADA Stakeholder Notice dated 30 May 2019 regarding meat contamination and clenbuterol (“**Notice**”);
  - 13.3. submitted that, according to the Notice, concentration of clenbuterol below 5mg/mL should not be considered as an AAF but as an atypical finding (“**ATF**”) requiring further investigation and no provisional suspension;
  - 13.4. requested for a copy of the laboratory analytical report including the estimated concentration of clenbuterol in the sample; and
  - 13.5. an extension until 5 July 2019 to file a defence.
14. On 27 June 2019, the BWF provided the Charge Notice and its attachments to Intanon’s counsel.
15. On 28 June 2019, Intanon requested that:
  - 15.1. the BWF consider the A Sample Report as an ATF;
  - 15.2. the Panel confirm the deadline of 5 July 2019; and

- 15.3. the Panel confirm that no provisional suspension be imposed given the ATF.
16. On 30 June 2019, the Panel agreed to the request for extension until 5 July 2019.
17. On 1 July 2019, the BWF responded and *inter alia* stated that:
  - 17.1. the AAF arose before the publication of the Notice, and is thus categorised as such by the BWF;
  - 17.2. the Notice refers only to contaminated meat sourced from China, Mexico and Guatemala. Intanon was not in any of those countries in the fourteen (14) day window prior to her positive doping control; and
  - 17.3. given the low concentration of clenbuterol, the BWF was providing Intanon a provisional hearing.
18. On 5 July 2019, Intanon provided her defence and a revised Response Form (“**Revised Response Form**”) which stated, *inter alia*, that:
  - 18.1. the level of clenbuterol is far below the minimum required performance level (“**MRPL**”) of 0.2ng/mL;
  - 18.2. prior to the positive doping control, she had tested negative following doping control undertaken on 4 April 2019. Therefore, it is highly unlikely that the clenbuterol in her system would have resulted from the end of excretion of a voluntary ingestion;
  - 18.3. between 8-12 April 2019, she was in Singapore and had consumed *inter alia*, chicken, pork and fish;
  - 18.4. clenbuterol is prohibited in Thailand, China and the European Union. Even if boiled at one hundred (100) degrees Celsius, beta-agonists are not eliminated from contaminated meat;
  - 18.5. it is difficult to trace the origin of meat in Thailand. The restaurants she had visited between 4-18 April 2019 stated that purchased their meat from the cheapest seller;
  - 18.6. the Thai National Anti-Doping Organisation (“**Thai NADO**”) was unwilling to provide information on clenbuterol testing in Thailand. She requested that the BWF contact the Thai NADO or WADA to obtain statistics about clenbuterol and Thai athletes, and the concentration found in their doping control samples;
  - 18.7. clenbuterol meat contamination in Thailand is highly likely. She exhibited three (4) written exhibits purporting to support her allegation:
    - 18.7.1. a study presented at the International Conference on Agricultural, Ecological and Medical Sciences on 7-8 April 2015 which shows that clenbuterol was found in seventy-four percent (74%) of the seventy four

(74) samples of animal (swine, cattle and chicken) feed collected in Thailand (“**Analysis of Beta-agonist in Animal Feeds**”);

18.7.2. a study monitoring beta agonist residue in swine tissues from northeast Thailand which revealed that ninety-one point nine five percent (91.95%) of the samples contained beta agonist residues (“**Beta-agonist residues in swine tissues**”); and

18.7.3. a Bangkok Post newspaper article dated 1 August 2018 alerting the Thai public that one thousand and eighty nine (1089) pigs raised in two (2) farms in Chachoengsao Muang district were seized by authorities following a positive result for, *inter alia*, clenbuterol (“**Bangkok Post article**”);

18.7.4. a study in 2016 on the situation of the beef industry in Thailand (“**2016 beef situation in Thailand**”) explaining *inter alia* that the supply of beef in Thailand cannot meet demand and that laws are required to be updated and fairly enforced to sustain domestic production; and

18.8. she was in the process of purchasing meat from the places she had previously eaten to have them tested. She had received results of one (1) which demonstrated the presence of Salbutamol.

19. On 5 July 2019, the BWF:

19.1. notified Intanon that the B Sample would be opened and analysed on 11 July 2019 at her expense; and

19.2. requested confirmation that she would proceed with the analysis and whether she would attend or appoint any representative to attend the opening.

20. On 5 July 2019, Intanon confirmed that:

20.1. the B Sample should be opened and analysed, and she would bear the cost; and

20.2. neither she nor a representative would attend the opening.

21. On 6 July 2019, the BWF submitted that in principle they had no objection to the possibility of meat contamination as a possible source of the ADRV. However, they reminded the Panel that the burden of proof lies on Intanon to prove on the balance of probabilities that such contamination occurred.

#### Provisional Hearing

22. On 7 July 2019, the Panel conducted a provisional hearing based on the parties’ written submissions pursuant to Articles 7.9.3 and 7.9.3.1 of the AD Regulations.

23. Given the available evidence, the Panel was satisfied on the balance of probabilities that the ADRV was likely to have involved a contaminated product and that no mandatory provisional suspension was to be imposed.

- 23.1. The Panel reserved its decision on the merits of the case following analysis of the B Sample and final submissions of Intanon and BWF.
24. On 10 July 2019, the decision was notified to Intanon.

#### B Sample

25. On 23 July 2019, IDAS provided the results of the B Sample analysis which confirmed the A Sample Report (“**B Sample Report**”).
26. The B Sample Report recorded this finding as an ATF.
27. On 25 July 2019, the B Sample Report was provided to Intanon.
28. On 26 July 2019, the BWF notified Intanon that they would proceed to prosecute the case as an AAF.

#### Final Hearing

29. On 28 July 2019, Intanon requested until the end of August 2019 to provide her submission for prior to the final hearing.
30. On 2 August 2019, the Panel confirmed the request.
31. On 28 August 2019, Intanon provided her submission and twenty (20) exhibits (“**First Submission**”). Of these, only the following were not exhibited previously:
  - 31.1. witness statement of Intanon dated 26 August 2019 (“**Witness Statement of Intanon**”);
  - 31.2. witness statement of Aubdul Aunampai dated 26 August 2019 (“**Witness Statement of Aunampai**”);
  - 31.3. two (2) tissue sampling reports dated 28 June 2019 and 15 August 2019 by the Department of Medical Sciences of the Ministry of Public Health, Thailand (“**DMS**”); and
  - 31.4. photographs of Yakiniku Grill restaurant (“**Yakiniku Restaurant**”).
32. On 30 August 2019, the BWF provided its response (“**BWF Submission**”). No additional evidence was provided.
33. On 2 September 2019, the Chair:
  - 33.1. provided Intanon a final opportunity to respond by 6 September 2019; and
  - 33.2. notified the parties that the Panel had decided that no oral hearing was necessary.
34. On 3 September 2019, the BWF notified Intanon of these matters.
35. On 6 September 2019, Intanon provided her final submission and three (3) exhibits (“**Second Submission**”):

- 35.1. an expert witness statement of Prof. Dr. Pascal Kintz dated 6 September 2019 (“**Witness Statement of Dr. Kintz**”);
  - 35.2. an article on the risk of testing positive for clenbuterol despite not being in China dated 23 July 2019 (“**Cycling Opinion Article**”); and
  - 35.3. an article on clenbuterol residue in beef samples collected in Java island dated 23 May 2018 (“**Residues in beef samples from Java**”).
36. On 9 September 2019, the BWF confirmed that it did not have any further submissions.

## A. APPLICABLE REGULATIONS

### Jurisdiction

37. Article 31.1.4 of the BWF Statutes (“**Statutes**”) recognises the Doping Hearing Panel as a judicial body of the BWF.
- 37.1. A doping hearing panel is a panel appointed by the Chair of the EJEG in accordance with Article 19.17 of the BWF Statutes.
- 37.2. The judicial bodies of the BWF have the power to make decisions and impose penalties in their areas of duty set out in the Statutes.
38. In accordance with the Scope of the AD Regulations, players are deemed, as a condition of their membership, accreditation and/or participation in the sport, to have agreed to be bound by the AD Regulations, and to have submitted to the authority of BWF to enforce the AD Regulations, and to the jurisdiction of the Doping Hearing Panel.
39. As such, the Panel has jurisdiction to hear these matters.
- 39.1. Intanon never disputed the jurisdiction of the Panel.

### Relevant provisions of the AD Regulations

#### Art 2.1: Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample

*2.1.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Players 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 Player’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

*2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Player’s A Sample where the Player waives analysis of the B Sample and the B Sample is not analyzed; or, where the Player’s B Sample is analyzed and the analysis of the Player’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player’s A Sample; or, where the Player’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.*

*2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample shall constitute an anti-doping rule violation.*

*2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.*

#### Art 2.2: Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method

*2.2.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault,*

*negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

*2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*

#### Art 3.1: Burdens and Standards of Proof

*BWF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether BWF has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Regulations place the burden of proof upon the Player or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*

#### Art 10.2: Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

*The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*

*10.2.1 The period of Ineligibility shall be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional.*

*10.2.1.2 The anti-doping rule violation involves a Specified Substance and BWF can establish that the anti-doping rule violation was intentional.*

*10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

*10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*

#### Art 10.4: Elimination of the Period of Ineligibility where there is No Fault or Negligence

*If a Player or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.*

## 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.*

*Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.*

*No Fault or Negligence: The Player or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Player must also establish how the Prohibited Substance entered his or her system.*

## **B. EVIDENCE AND POSITIONS OF THE PARTIES**

40. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence.

### **Evidence**

#### Form

41. The Form evidences that Intanon:

- 41.1. provided two (2) blood samples and the Sample;
- 41.2. declared to have only consumed "*Mineral drink*"; and
- 41.3. confirmed that the procedure for urine and blood testing was "*all good*" and that she has "*nothing*" to comment.

#### A Sample Report

42. The A Sample Report shows:

- 42.1. IDAS received a urine sample on 23 April 2019 bearing sample code 4655217, collected out of competition, from a female badminton athlete on 18 April 2019;
- 42.2. the test result states "*AAF-Adverse Analytical Finding - S1.2 Other Anabolic Agents/clenbuterol*"; and
- 42.3. the concentration level of clenbuterol present was 0.04ng/mL, below the MRPL of 0.2ng/mL and therefore, it is possible under certain circumstances that the AAF may be a result of food contamination.

#### The Notice

43. The Notice provides:

- 43.1. on 16 May 2019, WADA decided to amend Article 7.4 of the WADA Code to allow WADA-accredited laboratories to report an ATF for low concentration detections of clenbuterol;
- 43.2. under the current Article 7.4 of the WADA Code, laboratories may only report analytical testing results for exogenous prohibited substances as AAFs but not ATFs, which does not allow for investigations to take place when potential meat contamination scenarios arise as has been the case with clenbuterol. As such, anti-doping organisations ("**ADO**") are required to assert an ADRV against an athlete if the B sample confirms the A sample;
- 43.3. the amendment shall come into force on 1 June 2019 and is an interim solution until the 2021 WADA Code comes into effect;
- 43.4. the purpose of the amendment is to provide ADOs with the possibility of conducting an investigation when low concentrations of identified prohibited substances that are known meat contaminants are detected by laboratories and

reported as ATFs, therefore ensuring that valid meat contamination cases are dealt with fairly;

- 43.5. instructions to laboratories to report ATFs for concentrations of clenbuterol below 5ng/mL and AAFs for concentrations of clenbuterol equal to or above 5ng/mL;
- 43.6. the investigative steps for an ADO after receiving an ATF for clenbuterol:
  - 43.6.1. to enquire if the athlete was recently in Mexico, China or Guatemala, and if so, whether they ate meat (including the type, when and where it was eaten and the quantity);
  - 43.6.2. evaluate the athlete's explanation and if satisfied that the athlete had recently consumed meat in Mexico, China or Guatemala, to see if the analytical result is consistent with the consumption of meat estimated by the athlete by considering the excretion properties of the substance, as described in scientific literature;
  - 43.6.3. consider whether the athlete had recently provided other samples to rule out the possibility that the low level of clenbuterol detected is not the result of the tail end of excretion of clenbuterol which was previously used for performance enhancing effect;
  - 43.6.4. to assert an ADRV if the investigation reveals that the ATF was not consistent with meat contamination; and
- 43.7. WADA shall update the Notice in the event it identifies other exogenous prohibited substances that are known meat contaminants.

#### Response Form

44. The Response Form purports to explain the AAF and states that:

*“My meal each day contained meat about 100-200grams except some buffet meals were about 300-700 grams as follow:*

*During 4-5 April 2019, I was in Malaysia and had the food as below:*

*Chicken rice*

*Soup with pork ribs*

*Beef Yakiniku + Shabu buffet*

*During 6-7 April 2019, I was in Thailand and had the food as below:*

*BBQ and Crispy pork rice, Stir-fried pork with basil, BBQ pork noodle, pork fried rice, Thai BBQ Beef*

*During 13-18 April 2019, I was in Thailand and had the food as below:*

*Bar B Q Plaza-beef buffet, Chicken and pork noodle, Yakiniku (Beef and Pork BBQ) buffet, Bamboo shoot with pork, Spicy minced pork, Duck noodle, Stir-fried pork with basil, Grilled pork, Spicy minced beef, Pork fried rice, Stir-fried pork with basil, Chicken rice.*”

### Revised Response Form

45. The Revised Response Form purports to supplement the Response Form by identifying the food consumed between 8-12 April 2019 and states that:

*“My meal each day contained meat about 100-200grams except some buffet meals were about 300-700 grams as follow:*

*During 4-5 April 2019, I was in Malaysia and had the food as below:*

*Chicken rice*

*Soup with pork ribs*

*Beef Yakiniku + Shabu buffet*

*During 6-7 April 2019, I was in Thailand and had the food as below:*

*BBQ and Crispy pork rice, Stir-fried pork with basil, BBQ pork noodle, pork fried rice, Thai BBQ Beef*

*During 8-12 April 2019, I was in Singapore and had the food as below:*

*Chicken rice, BBQ and crispy pork rice, Noodle with fish ball, Fried noodle with pork.*

*During 13-18 April 2019, I was in Thailand and had the food as below:*

*Bar B Q Plaza-beef buffet, Chicken and pork noodle, Yakiniku (Beef and Pork BBQ) buffet, Bamboo shoot with pork, Spicy minced pork, Duck noodle, Stir-fried pork with basil, Grilled pork, Spicy minced beef, Pork fried rice, Stir-fried pork with basil, Chicken rice.”*

### B Sample Report

46. The B Sample Report states:

*“Analysis Details: The B sample analysis confirmed the A sample finding of clenbuterol at low level. According to WADA’s “Stakeholder Notice regarding meat contamination” (30 May 2019) this result constitutes now an Atypical Finding for clenbuterol*

*Analytical Finding*

*Class: S1.2 Other Anabolic Agents*

*Substance: clenbuterol*

*Estimated: 0.04ng/mL*

*Details concerning finding: Clenbuterol was found in this sample at an estimated concentration of 0.04 ng/mL which is below the MRPL of 0.2 ng/mL (WADA TD2018MRPL). As stated by WADA..., it is possible that under certain circumstances the presence of a low level of clenbuterol in an athlete sample can be the result of food contamination.”*

### Witness Statement of Intanon

47. Intanon testified that:

47.1. she is an elite badminton player;

- 47.2. she usually consumes between one hundred (100) to two hundred (200) grams of meat every day unless at eating at a buffet where she consumes between three hundred (300) to seven hundred (700) grams of meat;
- 47.3. in Thailand, she “*notably go to the following restaurant or places to eat as they are conveniently located close to my residence: Yakiniku Buffet, Bar B Q plaza, Street food, or food from the market*”;
- 47.4. further to having tested positive for clenbuterol, she had tried to identify the source of her ADRV and in particular, suspects “*BBQ buffets where I am used to go to and actually went before the anti-doping test. Such buffets are ‘eat as you can’ style, where you can choose raw meat from the buffet, which is then directly grilled by the customers*”;
- 47.5. she returned “*several times to [Yakiniku Restaurant]*” with her friend to collect meat samples;
- 47.6. she put “*some raw meat (mainly pork and beef)*” from the buffet into a plastic box which was then kept in her fridge. She then provided it to BAT for further testing at DMS;
- 47.7. she also purchased meat from the “*Siti Karem food market*” to be tested;
- 47.8. she had tried to enquire at the other restaurants where she had eaten but was unable to obtain any reliable and clear information;
- 47.9. for testing, she had provided the BAT with meat samples from Yakiniku Restaurant:
- 47.9.1. in June 2019. The results were negative except for one (1) sample which returned a finding of salbutamol;
- 47.9.2. in July 2019. The results again were negative; and
- 47.9.3. in the second half of July 2019. The results revealed clenbuterol in all samples.

Witness Statement of Aunampai

48. Aubdul Aunampai testified that:

- 48.1. he is the physical therapist and private fitness coach of Intanon. He often ate meals with Intanon;
- 48.2. Intanon informed him of the ADRV; and
- 48.3. he had accompanied Intanon on three (3) occasions to Yakiniku Restaurant to collect meat samples. These meat samples were kept in a plastic container in a fridge before they were provided to the BAT for further testing.

DMS Report dated 28 June 2019

49. The report dated 28 June 2019 evidences that:

- 49.1. the BAT had provided fourteen (14) meat samples from Yakiniku Restaurant and Siti Kasem food market on 26 June 2019 for testing;
- 49.2. “*Analysis method: LC-MS/MS Method (Analysis for Brombuterol, Clenbuterol, Ractopamine, Salbutamol)*”

*Result of analysis*

<i>Sample No.</i>	<i>Sample characteristics</i>	<i>Storage</i>	<i>Results of analysis (Micrograms per Kilograms)</i>
1	<i>Fresh chicken meat with skin, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>
2	<i>Fresh chicken, only meat, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>
3	<i>Streaky pork, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>
4	<i>Brisket meat, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Salbutamol 20.1</i>
5	<i>Brisket meat, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>
6	<i>Sliced brisket meat, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>
7	<i>Sliced brisket meat, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>
8	<i>Sliced brisket meat, seasoned, approximate</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>

	<i>weight 30 grams, plastic packed</i>		
9	<i>Sliced brisket meat, seasoned, approximate weight 30 grams, plastic packed</i>	<i>Yakiniku Grill Restaurant</i>	<i>Not found</i>
10	<i>Fresh chicken, only meat, approximate weight 200 grams, plastic packed</i>	<i>Siri Kasem Fresh-food Market</i>	<i>Not found</i>
11	<i>Fresh chicken meat with skin, approximate weight 200 grams, plastic packed</i>	<i>Siri Kasem Fresh-food Market</i>	<i>Not found</i>
12	<i>Fresh chicken, only meat, approximate weight 200 grams, plastic packed</i>	<i>Siri Kasem Fresh-food Market</i>	<i>Not found</i>
13	<i>Ground pork, approximate weight 200 grams, plastic packed</i>	<i>Siri Kasem Fresh-food Market</i>	<i>Not found</i>
14	<i>Fresh pork, approximate weight 200 grams, plastic packed</i>	<i>Siri Kasem Fresh-food Market</i>	<i>Not found”</i>

- 49.3. historical testing by the Department of Livestock Development in 2016 found clenbuterol in nine (9) meat samples, and in 2018, five (5) meat samples;
- 49.4. clenbuterol is a beta agonist used as a leanness-enhancing agent in pork, beef, and lamb; and
- 49.5. the Ministry of Public Health had banned the use of leanness-enhancing agents in Thailand in 2003.

DMS Report dated 15 August 2019

50. The report dated 15 August 2019 evidences that:

- 50.1. the BAT had provided eight (8) meat samples from Yakiniku Restaurant on 30 July 2019 for testing where clenbuterol was found in all eight (8) samples:

*“Result of analysis*

<i>Sample No.</i>	<i>Sample characteristics</i>	<i>Storage</i>	<i>Results of analysis (Micrograms per Kilograms)</i>

1	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found</i>
2	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found</i>
3	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found</i>
4	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found</i>
5	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found</i>
6	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found</i>
7	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found</i>
8	<i>Fresh meat</i>	<i>Yakiniku Grill Meat Restaurant</i>	<i>Clenbuterol found”</i>

Photographs of Yakiniku Restaurant

51. The photographs show:

- 51.1. various meats on the menu; and
- 51.2. customers cooking raw meat themselves.

Analysis of Beta-agonists in Animal Feeds article

52. The article *inter alia* states:

- 52.1. in Thailand, despite being banned, farmers use beta-agonist such as salbutamol, clenbuterol and ractopamine as feed additives in cattle feeds to improve product performance and reduce carcass fat accretion in the cattle.

Beta-agonist residues in swine tissues article

53. The article *inter alia* states:

- 53.1. clenbuterol accelerates the catabolism of fat in pigs, and when added to feed, it not only shortens growth time but also increases the sale price of pork and pig organ;
- 53.2. clenbuterol accumulates in the human body through ingestion, is heat stable and only decompose at temperatures over one hundred and seventy two (172) degrees celsius, thus cooking cannot easily eliminate its toxic; and

- 53.3. of two hundred and sixty-one (261) swine tissues collected from four (4) provinces in north-eastern Thailand from December 2010 to May 2011, ninety-one-point nine five percent (91.95%) contained beta agonist residue.

Bangkok Post article

54. The article states:

- 54.1. a total of one thousand and eighty-nine pigs (1089) pigs have been seized from two (2) farms in Chachoengsao Muang district in Thailand after testing positive for salbutamol and clenbuterol.

2016 beef situation in Thailand article

55. The article states:

- 55.1. raising cattle for commercial purposes has been increasing but production cannot meet the demands; and
- 55.2. to sustain beef cattle production in Thailand, laws need to be updated and fairly enforced and appropriate technology (e.g feed and feeding, fattening, disease control, slaughtering) should be practiced to increase the efficiency of beef cattle production.

Witness Statement of Dr. Kintz

56. Dr Kintz testified:

- 56.1. clenbuterol is a long-acting oral  $\beta_2$ -adrenergic partial agonist that stimulates the receptors to relax bronchial muscle, inhibits the release of inflammatory mediators, decreases mucus production and may increase the rate of mucociliary transport in the airways;
- 56.2. clenbuterol also decreases body fat and increases muscle mass which has prompted its abuse by athletes, particularly bodybuilders;
- 56.3. cheating athletes can abuse clenbuterol by using a tablet dosed at forty (40)  $\mu\text{g}$  once or twice a day;
- 56.4. although WADA only listed three (3) countries in its notice to stakeholders, given that national borders are not hermetic, one cannot claim that clenbuterol contamination is not an issue in other countries including Thailand;
- 56.5. it is important to note that the urine test of Intanon on 4 April 2019 returned negative. In cases of clenbuterol abuse for doping purposes, the drug has to be administered daily over a long-term period to be consistent with anabolic properties. The negative urine test performed two (2) weeks before the AAF does not support repetitive use of clenbuterol; and
- 56.6. the clenbuterol concentration of 0.04ng/mL in the urine of Intanon represents a minute amount and supports possible contamination.

Cycling Opinion article

57. The article states:

- 57.1. China as well as other countries in Asia are typical countries with a high incidence of clenbuterol application and weak policies to prevent that; and
- 57.2. WADA statistics show the number of clenbuterol positives had increased from zero-point two percent (0.2%) in 2004 to one percent (1%) in 2017.

Residue in beef samples from Java article

58. The article states:

- 58.1. analysis of thirty-six (36) local beef meat samples collected from Jakarta, Bandung, Semarang and Yogyakarta between March 2013 to August 2013 revealed that seven (7) samples were positive for clenbuterol exceeding the threshold limit of 0.02ng/g by twelve (12) to seventy-five (75) times.

**Position of the Parties**

59. In summary, the BWF case against Intanon was that she:

- 59.1. violated Article 2.1 of the AD Regulations by failing to ensure that no prohibited substance entered her body; and
- 59.2. violated Article 2.2 of that AD Regulations by failing to ensure that no prohibited substance was used.

60. The BWF position, in summary, is:

- 60.1. the A Sample Report recorded an AAF for clenbuterol and B Sample Report confirms the A Sample Report;
- 60.2. clenbuterol is an *SI.2 Other Anabolic Agent* under the WADA 2019 Prohibited List;
- 60.3. according to BWF records, Intanon did not have a TUE to justify the presence of clenbuterol in her system;
- 60.4. the AAF (and ATF in the B Sample Report) should be considered as an ADRV as Intanon did not consume meat from the identified countries in the Notice;
- 60.5. it agrees that unintentional meat contamination can generally warrant the application of Article 10.4 of the AD Regulations and does not object to its application if the Panel finds that Intanon has established, on the balance of probabilities, both the origin of the substance and that meat contamination had occurred; and
- 60.6. if Article 10.4 of the AD Regulations applies, an ADRV would still be recorded and public disclosure is required under Article 14.3.2 of the AD Regulations.

61. In summary, Intanon's defence is:
  - 61.1. she does not challenge the A Sample Report and B Sample Report. However, no ADRV should be recorded due to the ATF recorded in the B Sample Report, read together with the Notice;
  - 61.2. in any event, the only plausible explanation for her ADRV is the consumption of contaminated meat between 4 April 2019 and 18 April 2019 because:
    - 61.2.1. no clenbuterol was found in her sample taken on 4 April 2019;
    - 61.2.2. the extremely low concentration of clenbuterol in her sample taken on 18 April 2019;
  - 61.3. the DMS report dated 15 August 2019 confirms the presence of clenbuterol in the meat samples obtained from Yakiniku Restaurant, a restaurant she frequents for meals;
  - 61.4. she has demonstrated on the balance of probabilities that clenbuterol entered her system through the ingestion of meat contaminated with clenbuterol from Yakiniku Restaurant during the month of April 2019;
  - 61.5. she has no intent to cheat. To benefit from the performance enhancing effect, Dr Kintz had testified that athletes will have to consume clenbuterol once or twice a day for a long-term period. The negative result on 4 April 2019 demonstrates that she did not ingest clenbuterol in a repetitive manner;
  - 61.6. Article 10.4 of the AD Regulations applies because:
    - 61.6.1. she consumed meat in a restaurant at a city where she lives. This cannot be considered as presenting the slightest risk in terms of anti-doping;
    - 61.6.2. Thailand is not considered by WADA as a high-risk country for food contamination. Therefore, there is no reason for her to be particularly careful about the meat she was eating; and
  - 61.7. she requested that no consequences be imposed and the case to remain strictly confidential.

## C. FINDINGS

62. While the Panel has carefully considered all the facts, evidence, allegations and arguments submitted in writing, the Panel refers in these findings only to the submissions and evidence it considers necessary to explain its reasoning.
63. The Panel was grateful for, and ably assisted by, the quality of the written submissions by the Parties' representatives.
64. The Panel takes cognisance of Article 3.1 of the AD Regulations which imposes the burden on:
  - 64.1. BWF to establish to the comfortable satisfaction of the Panel that an ADRV has occurred; and
  - 64.2. Intanon to rebut or establish specific facts or circumstances on the balance of probability.

### **Result Management Process**

65. The Panel noted that:
  - 65.1. the A Sample Report returned with an AAF whereas B Sample Report returned with an ATF;
  - 65.2. the Notice purports to amend Article 7.4 of the WADA Code to allow WADA accredited laboratories to report an ATF for clenbuterol;
  - 65.3. by this amendment, anti-doping organisations can investigate to determine whether an athlete is a victim of meat contamination;
  - 65.4. the Notice took effect on 1 June 2019 and made specific reference to meat being consumed in Mexico, China or Guatemala;
  - 65.5. if an athlete can prove that they had recently consumed meat from Mexico, China or Guatemala and the ADO is satisfied that the analytical result is consistent with the consumption of contaminated meat, then no ADRV shall be asserted and no consequences imposed;
  - 65.6. on 26 July 2019, the BWF confirmed that it will prosecute the case as an AAF as the Notice was not applicable to Intanon as she did not consume meat in Mexico, China, or Guatemala; and
  - 65.7. Intanon contends that as the B Sample Report returned with an ATF:
    - 65.7.1. the Notice applies to her; and
    - 65.7.2. no ADRV be asserted since she had provided an explanation supported by evidence that she is a victim of meat contamination.

66. The Panel found that:
  - 66.1. the A Sample was analysed before the effective date (30 May 2019) of the Notice and the B Sample was analysed after the effective date of the Notice;
  - 66.2. the Notice only refers to meat being consumed in Mexico, Guatemala and China. Intanon did not assert to having consumed meat in any of those countries;
  - 66.3. the Notice is silent as to the possibility of meat contamination from a country other than Mexico, Guatemala and China; and
  - 66.4. there is no precedent for the BWF to seek guidance on the application of the Notice. It must apply the rules as they stand.
67. Accordingly, the Panel accepted the BWF position to prosecute this case as an AAF.
68. The Panel also noted that Intanon did not produce any evidence of an applicable TUE or allege any departure from the International Standard for Testing and Investigations or International Standard for Laboratories that may have caused the AAF.

#### **Violation of Art 2.1 of the AD Regulations**

69. Article 2.1 of the AD Regulations is clear. An ADRV is established if a prohibited substance is present in an athlete's sample, without any regard to fault.
70. In this regard, the Panel noted that the AD Regulations:
  - 70.1. impose a duty on an athlete to ensure that no prohibited substance enters their body. This is a rule of strict liability;
  - 70.2. provide that sufficient proof of an ADRV is established by *inter alia*, the B sample confirming the A sample;
  - 70.3. state that unless a specific quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a prohibited substance in a sample shall constitute an ADRV; and
  - 70.4. provide an exception to the strict liability rule in cases where special criteria have been established for prohibited substances that can also be produced endogenously.
71. The Panel subsequently held that:
  - 71.1. Intanon had a duty to ensure that no prohibited substance entered her body;
  - 71.2. clenbuterol is a prohibited substance under the WADA 2019 Prohibited List;
  - 71.3. the A Sample Report and B Sample Report demonstrated the presence of clenbuterol in her system;

- 71.4. no quantitative threshold has been identified in the WADA 2019 Prohibited List for clenbuterol; and
- 71.5. clenbuterol is not produced endogenously.
72. Accordingly, the Panel held that an ADRV had been established to its comfortable satisfaction.

### **Violation of Article 2.2 of the AD Regulations**

73. Given its finding that an ADRV had been established pursuant to Article 2.1 of the AD Regulations, the Panel did not consider the application of Article 2.2 of the AD Regulations, nor did the BWF pursue such action.

### **Consequences**

74. Article 10.2 of the AD Regulations provides for the consequences of a violation of Article 2.1 of the AD Regulations where the substance is a Non-Specified substance:
- 74.1. a period of ineligibility of four (4) years, unless the athlete can establish that the ADRV was not intentional, at which point the period of ineligibility shall be two (2) years; and
- 74.2. a potential reduction or suspension of the aforesaid period of ineligibility pursuant to Articles 10.4, 10.5 or 10.6 of the AD Regulations.

### Intent

75. Article 10.2.3 of the AD Regulations provides that the term “*intentional*” is:

*“...meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”*

76. As such, given that this ADRV involved a Non-Specified substance, Intanon was required to prove on the balance of probabilities that she did not intentionally consume clenbuterol within the meaning provided in the AD Regulations, in order to benefit from a reduction in the starting period of ineligibility from four (4) years to two (2) years.
77. Taking in to consideration all of the available evidence, the Panel agreed that Intanon had established, on the balance of probabilities, that she did not know that consuming meat purchased from a restaurant or street market in Malaysia, Thailand, or Singapore, and in particular from Yakiniku Restaurant, would result in an ADRV or that she manifestly disregarded the risk of such consumption.

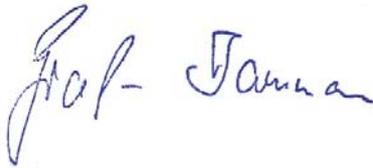
78. Accordingly, the Panel held that the starting period of ineligibility shall be two (2) years, subject to any potential reduction or suspension.

Reduction or suspension

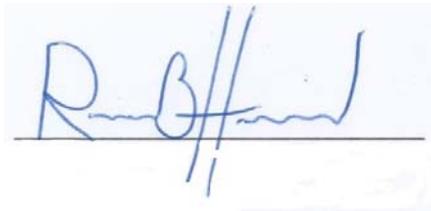
79. In determining whether to reduce the starting period of ineligibility of two (2) years, the Panel noted:
- 79.1. that BWF had no objection to a finding of “*no fault or negligence*” under Article 10.4 of the AD Regulations, subject to the Panel being satisfied that the origin of clenbuterol was established and that meat contamination had occurred;
  - 79.2. the relevant definitions in the AD Regulations, including the necessity for “*exceptional circumstances*” to have occurred for it to make a “*no fault or negligence*” finding; and
  - 79.3. the burden was with Intanon to establish on the balance of probabilities that she bore “*no fault or negligence*”. In this respect, she was required to establish how clenbuterol had entered her system.
80. In light of the above, the Panel found on the balance of probabilities that Intanon had successfully established how clenbuterol entered her system (through consumption at Yakiniku Restaurant), and that she did not know or suspect, and could not reasonably have known or suspected even with the utmost caution, that she had consumed clenbuterol through the ingestion of contaminated meat.
81. In making this finding, the Panel noted:
- 81.1. the sufficiently low concentration of clenbuterol;
  - 81.2. the scientific evidence with respect to meat contamination in Thailand;
  - 81.3. the Notice;
  - 81.4. WADA’s general treatment of clenbuterol positives;
  - 81.5. the positive test for clenbuterol of at least eight (8) samples collected from the Yakiniku Restaurant where Intanon had consumed meat prior to being subject to doping control; and
  - 81.6. the scientific analysis provided in the Witness Statement of Dr. Kintz.
82. Accordingly, the Panel applied Article 10.4 of the AD Regulations and eliminated the two (2) year period of ineligibility in full.

**D. DECISION**

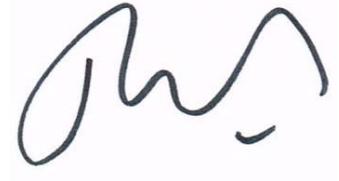
1. Ms. Ratchanok Intanon (BWF ID 35642) has violated Article 2.1 of the BWF Anti-Doping Regulations and committed an anti-doping rule violation.
2. Ms. Ratchanok Intanon (BWF ID 35642) bore no fault or negligence for the anti-doping rule violation and thus no period of ineligibility shall be imposed.
3. The parties shall bear their own costs and expenses for this matter.
4. This decision shall be made public.



**Prof. Dr Toni Graf-Baumann**



**Mr. Rune Bård Hansen**  
**(Chair)**



**Mr. James Kitching**

**23 September 2019**