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CRS Report for Congress

International Convention Against Doping in Sport: Issues for Congress

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Summary

The International Convention Against Doping in Sport seeks to harmonize anti-doping commitments for non-professional sports at the international level. This Convention, adopted by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in 2005, entered into force on February 1, 2007. On February 6, 2008, George W. Bush transmitted the treaty to the Senate for its advice and consent for ratification. Issues that could arise as the Senate considers the treaty include its relationship to anti-doping regulations in professional sports, potential consequences that non-ratification could pose to the United States, and the legitimacy and effectiveness of current international anti-doping activities. U.S. ratification would not require changes to current federal laws. This report will be updated as events warrant.

Background

Doping involves the use of substances or methods that artificially enhance athletic performance.[1] Although doping is not a new phenomenon, policy makers remain concerned about the health effects and ethical implications associated with the continued use of performance-enhancing substances in competitive sports. Anti-doping rules have been in place for various sports and in various countries since at least the 1920s, but many claim that the enforcement of anti-doping rules is fundamentally limited by a lack of uniform standards across sports and across countries.[2] In response to such criticism, UNESCO adopted in 2005 the International Convention Against Doping in Sport, which

[1] Examples of doping substances include certain types of steroids, hormones, and stimulants; examples of doping methods include blood doping, gene doping, and tampering with tests.

[2] See CASA National Commission on Sports and Substance Abuse, *Winning at Any Cost: Doping in Olympic Sports*, 2000, at [http://www.casacolumbia.org/absolutenm/articlefiles/379-winning_at_any_cost.pdf].

seeks to harmonize anti-doping commitments for non-professional sports at the international level.[3] Eighty-five states are now parties to the Convention.[4]

Treaty Evolution. The field of international anti-doping policy has undergone several rapid transformations in the past decade. The International Olympic Committee (IOC), the umbrella organization for all participants in the Olympic Movement and whose authority includes sport doping regulation, leads the international campaign against sport doping.[5] In 1999, the IOC created the World Anti-Doping Agency (WADA) as the first independent entity to monitor and enforce international anti-doping activities for non-professional sports. One of WADA's first achievements was to develop an international framework for harmonizing anti-doping policies, rules, and regulations among international amateur sport organizations and public authorities, called the Olympic Movement Anti-Doping Code. In 2003, it was modified and renamed the World Anti-Doping Code (the Code). As a non-governmental foundation, however, WADA cannot legally bind governments to its policies, including the Code.

Also in 2003, 192 countries, including the United States, signed the Copenhagen Declaration on Anti-Doping in Sport.[6] The Copenhagen Declaration is a political statement of intent to identify the Code as the "foundation in the world wide fight against doping in sport," ensure that national anti-doping policies conform with the Code, and acknowledge the role of WADA in coordinating and standardizing international anti-doping efforts according to the Code. UNESCO's 2005 International Convention Against Doping in Sport further institutionalizes anti-doping norms among national governments.

Treaty Commitments. State Parties to the Convention are required to harmonize national laws, regulations, policies, and administrative practices with the "principles" of the Code.[7] This includes restricting availability of prohibited substances,[8] applying WADA's standards for granting therapeutic use exemptions, funding domestic anti-doping test programs, supporting the sanctioning of doping violators, promoting anti-doping research and education, and facilitating international anti-doping cooperation by supporting and funding WADA.[9] Every two years, State Parties are also required to provide the Conference of the Parties with status reports on their compliance with the

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[3] See the text at [http://unesdoc.unesco.org/images/0014/001425/142594m.pdf#page=2].

[4] See the State Parties at [http://portal.unesco.org/la/convention.asp?KO=31037&language=E&order=alpha].

[5] The Olympic Movement includes the International Olympic Committee (IOC); the Organising Committees of the Olympic Games (OCOGs); the National Olympic Committees (NOCs); International Federations (IFs), which internationally govern each sport in the Olympics; National Governing Bodies (NGBs), which are the domestic counterparts to IFs; and member athletes.

[6] See the full document at [http://www.wada-ama.org/rtecontent/document/copenhagen_en.pdf].

[7] For an article-by-article analysis of potential U.S. obligations under the Convention, see Treaty Doc. 110-14, *Message from the President of the United States Transmitting International Convention Against Doping In Sport*, February 6, 2008.

[8] The 2008 list is at [http://www.wada-ama.org/rtecontent/document/ 2008_List_En.pdf].

[9] Notably, some argue that international treaty commitments can undermine U.S. sovereignty by favoring international law over U.S. constitutional law and self-government.

Convention. State Parties are the sole voting members of the Convention's Conference of the Parties. WADA is an advisory organization to the Conference of the Parties.

U.S. ratification would not require changes to domestic laws nor additional funding contribution levels to WADA and domestic anti-doping programs.[10] Further, the Convention does not apply to professional sport associations and institutions.

U.S. Policy

The Administration states that ratification of this treaty is a priority.[11] On February 6, 2008, the President transmitted the treaty to the Senate for its advice and consent for ratification.[12] The President did not recommend any reservations, understandings, or declarations to accompany the treaty.[13] On May 22, 2008, the Senate Foreign Relations Committee held a hearing on the International Convention Against Doping in Sport. At the hearing, Members of Congress explained that they are expediting Senate consideration of this treaty in order to avoid IOC sanctions against non-ratifying countries, including bans against hosting future Olympic Games.

National Anti-doping Testing. Since its creation in October 2000, the U.S. Anti-Doping Agency (USADA) has implemented and enforced the Code for Olympic sports in the United States.[14] In 2006, USADA reported spending $5.9 million on anti-doping test expenses, primarily for Olympic, Paralympic, and Pan American Sports.[15] Professional sport associations and leagues, including Major League Baseball and the National Football League, do not fall under the jurisdiction of federal regulation and adhere to their own anti-doping policies, testing requirements, and penalties.[16]

Substance Control. The U.S. Office on National Drug Control Policy, the lead policy office for national drug control programs, identifies the elimination of doping in

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[10] Article 17 of the Convention, however, establishes a "voluntary fund."

[11] Testimony of Scott M. Burns before the Senate Foreign Relations Committee on the International Convention Against Doping in Sport, May 22, 2008.

[12] Under the U.S. Constitution, the President is responsible for making treaties with the advice and consent of the Senate. See more information on the treaty process at [http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm].

[13] The Senate has the option of making its approval of a treaty conditional by including in the resolution amendments to the text of the treaty, reservations, understandings, interpretations, declarations, or other statements. The President and the other countries involved would then have to decide whether to accept the conditions and changes in the legislation, renegotiate the provisions, or abandon the treaty.

[14] Congress first recognized USADA as the "official anti-doping agency for Olympic, Pan American, and Paralympic sport" in the United States in the Treasury and General Government Appropriations Act, 2002 (P.L. 107-67, Section 644). In the 110th Congress, the same recognition was included in P.L. 110-161, Section 733.

[15] USADA, *2006 Annual Report*, at [http://www.usantidoping.org/files/active/who/annual_report_2006.pdf].

[16] For further discussion, see CRS Report RL32894, *Anti-Doping Policies: The Olympics and Selected Professional Sports*, by L. Elaine Halchin.

sport as a goal in its 2008 National Drug Control Strategy document.[17] To this end, several national laws proscribe many substances identified by the Code. The Controlled Substances Act, as amended (21 U.S.C. 801 et seq.), prohibits the production, movement, import, distribution, and sale of many of the substances identified in the Code's "List of Prohibited Substances and Methods." Substances on the Code's list that are not subject to the Controlled Substances Act are subject to the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.), which restricts their use to legitimate medical activities. In addition, the U.S. government commits law enforcement resources to investigate doping cases. In one example, the U.S. Drug Enforcement Administration (DEA), in conjunction with other law enforcement entities, participated in a two-year international steroid trafficking investigation ending in 2007, called Operation Raw Deal, which resulted in 124 arrests and the seizure of 11.4 million steroid dosage units, $6.5 million, 25 vehicles, three boats, and 71 weapons.[18]

Commitments to Anti-doping Research and Education. USADA and U.S. agencies support anti-doping research and education. USADA budgets approximately $2 million per year in support of research related to the deterrence of the use of performance-enhancing drugs in sports, and in 2006, spent approximately $1.3 million in education. Combined, anti-doping research and education programs accounted for approximately 27% of USADA's expenses in that year. Other anti-doping research is funded through the U.S. Department of Health and Human Services, DEA, and U.S. Department of Education.

Multilateral Commitments. The Administration demonstrates its support for international efforts to combat doping in sport through its participation in several multilateral anti-doping venues. As a signatory to the 2003 Copenhagen Declaration on Anti-Doping in Sport, the U.S. government formally recognized the role and importance of WADA in harmonizing international anti-doping standards. The U.S. government is also a member of WADA's Foundation Board and Executive Committee, and Congress regularly appropriates funding to support WADA. In FY2008, Congress appropriated $1.7 million to WADA.[19] The United States also participates in anti-doping activities through the Council of Europe, the Caribbean Community, and the Americas Sports Council, the latter an informal governmental organization designed to combat doping in sport in North, South, and Central America.

Issues for Consideration

Participation in the Olympics. Lack of ratification may result in a ban from hosting and participating in some international competitions, including future Olympic Games. The IOC requires that governments ratify the International Convention Against Doping in Sport by January 1, 2009 — and failure to do so may result in those countries being barred from participation in the 2010 Winter Olympics in Vancouver, Canada, and

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[17] See [http://www.whitehousedrugpolicy.gov/publications/policy/ndcs08/2008ndcs.pdf].

[18] See the DEA press release at [http://www.dea.gov/pubs/pressrel/pr092407.html].

[19] Title II of Division D, Financial Services and General Government Appropriations Act, 2008, Division D, in the Consolidated Appropriations Act, 2008 (P.L. 110-161, 121 STAT 1984).

the 2012 Olympics in London.[20] Some also speculate that failure to ratify the treaty could affect a city's bid for hosting the 2016 Olympics. Chicago is the U.S. Olympic Committee's candidate for the 2016 Games. The IOC plans to announce its selection for the 2016 Olympics in October 2009.

Consequences for Professional Sports. The International Convention Against Doping in Sport does not apply to professional sports. Some athletes of U.S. professional teams, however, may already follow the Code — whose guidelines the Convention embraces — when they participate in international tournaments under the jurisdiction of organizations that already implement the Code. This has already been the case, for example, when National Basketball Association or National Hockey League players participate in the Olympic Games or World Championships. Article 20 of the Convention, however, requires that State Parties encourage professional sports associations and institutions to develop anti-doping principles consistent with the Code.

Symbolic Importance of the Convention. Many observers claim that ratification of the Convention is important for symbolic purposes. Upon the President's transmittal of the Convention to the Senate for consideration, the White House Press Secretary released a statement justifying its ratification, stating that it would "solidify our Nation's place as a leader in the worldwide effort to rid athletics of cheating through chemistry."[21] Many, including Members of Congress, argue that international commitments to anti-doping can help set a positive example for elite and aspiring athletes and help discourage their use of performance-enhancing substances.[22] Further, some argue that government support for anti-doping measures is important because it reflects a prevailing "sense of public interest in the exclusion of performance enhancing drugs from the sporting arena."[23]

Effectiveness of Anti-doping Tests. Many observers argue that the value of international anti-doping efforts, including the International Convention Against Doping in Sport, are limited by a lack of effective anti-doping tests that can positively identify prohibited substances. Historically, the search for better methods to detect doping substances has lagged behind the discovery and use of new, undetectable substances.[24] For example, though the use of anabolic steroids was already reportedly "widespread" by the early 1970s, a reliable test method for detecting them was not found until 1974, and

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[20] "IOC, WADA Rage against Lack of Support," *The Bangkok Post*, November 17, 2007.

[21] White House, Statement of the Press Secretary, February 7, 2008, at [http://www.whitehouse.gov/news/releases/2008/20080207-4.html].

[22] Such comments were voiced by several Members of Congress during a February 27, 2008, hearing on Drugs in Sports, held by the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection.

[23] Eoin Carolan, "The New WADA Code and the Search for A Policy Justification for Anti-Doping Rules," *Seton Hall Journal of Sports and Entertainment Law*, Vol. 16, 2006, p. 39.

[24] See "The Secret Steroid," *The Economist*, October 23, 2003; Jessica K. Foschi, "A Constant Battle: The Evolving Challenges in the International Fight against Doping in Sport," *Duke Journal of Comparative and International Law*, vol. 16, 2006, pp. 457-486.

they were only added to the IOC's list of prohibited substances in 1976.[25] More recently, anti-doping efforts suffered setbacks related to the use of designer, or synthetic, steroids that have proven difficult to detect. New concern currently surrounds the possibility of "gene doping," whereby genetic therapies may be used to enhance athletic performance.[26]

Athletes' Rights Protection. The International Convention Against Doping in Sport requires State Parties to adhere to the principles of the Code. Some observers, however, question whether the Code sufficiently protects athletes who may be accidentally implicated in a doping violation.[27] These critics argue that the Code imposes excessively stringent punishments, including potentially career-ending suspensions, that offer little distinction between intentional doping and the detection of trace levels of prohibited substances originating from the consumption of contaminated or mislabeled nutritional supplements.[28] Further, some question the legitimacy of WADA as an authority in international anti-doping policy, accusing WADA of not being sufficiently transparent in its decision making and resistant to outside scrutiny.[29] Critics have also questioned WADA procedures for handling drug testing samples and avoiding contamination, as well as for dealing with false positives and other potential testing mistakes.

Cost of Enforcing Anti-doping Regulations. The International Convention Against Doping in Sport commits State Parties to funding WADA and domestic anti-doping tests. Although ratification of the Convention does not impose new costs upon the U.S. government, it would commit the United States to continuing such funding in the future. Some critics argue that the cost of anti-doping activities, especially legal costs of adjudicating doping cases, outweighs the benefits of deterring the use of performance-enhancing substances in sport.[30] USADA's legal expenses, for example, represented more than 15% ($1.8 million) of its total expenses in 2006. Already in 2008, USADA has sought more than $1 million in external financial support from WADA for its legal case against U.S. cyclist Floyd Landis, who was stripped of the 2006 Tour de France title for a doping violation.[31]

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[25] WADA, "A Brief History of Doping," at [http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=312].

[26] See Sam Mellinger, "Gene Doping Is Next Frontier of Performance Enhancers in Sports," *The Kansas City Star*, May 11, 2008.

[27] Article 2.1.1 of the Code holds the athlete liable for any prohibited substance detected.

[28] See Edward H. Jurith and Mark W. Beddoes, "The United States' and International Response to the Problem of Doping in Sports," *Fordham Intellectual Property, Media, and Entertainment Law Journal*, vol. 12, 2001-2002, pp. 461-488. Notably, WADA urges athletes not to use dietary supplements because of irregular international labeling standards. See WADA, *Athlete Guide*, 2006, at [http://www.wada-ama.org/rtecontent/document/Athlete_Guide_2006_EN_FR_SP.pdf].

[29] Michael A. Hiltzik, "Athletes' Unbeatable Foe," *Los Angeles Times*, December 10, 2006; Hiltzik, "Athletes See Doping Case Appeals as Futile Exercise," *Los Angeles Times*, December 11, 2006; "Upshaw Tells Newspaper He Doubts WADA's Credibility," *ESPN*, January 21, 2007.

[30] See "(EU) EP/Sport: Mavrommatis Report on Sport Adopted," *Agence Europe*, May 9, 2008.

[31] "Landis Doping Case Cost World Anti-Doping Agency $1.3 Million," *AP*, May 12, 2008.