

# Chinese Swimmer Sun Yang Is a Victim of Confusion and Bias

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**Sun Yang** is an Olympic Gold medalist and world record holding swimmer. He was recently [ruled](#) to be guilty of an anti-doping rule violation (ADRV) and banned from competing for eight years. Unless his [appeal](#) to overturn the decision is successful, this will end the swimming career of the 28 year old athlete.

The decision was met with shock and anger among his many fans in China; glee and gloating by some western media and swimming competitors. What lies behind this important decision? Was it upholding 'fair sport' or a travesty of justice? Has it advanced or undermined the cause of anti-doping? The following article outlines the Sun Yang case and context.

## Sun Yang's first anti doping rule violation

Sun Yang has been punished with an eight year ban because this is his **second** ADRV. The circumstances of that first offence are important.

Beginning in 2008, Sun Yang's doctor prescribed a heart medication (trimetazidine) to treat incidents where the athlete had heart palpitations and dizziness. The medication was **not prohibited**. In January 2014, trimetazidine was [added](#) to WADA's prohibited 'In competition' list. Sun Yang and his doctor were unaware of the change. If they had been aware, they would have either continued the medication with a Therapeutic Use Exemption (TUE) or discontinued it. They were unaware and thus, four months later, Sun Yang tested positive for trimetazidine.

Authorities agreed that the violation was unintentional and Sun Yang was given a mild three month sanction. But that ruling still counts as a full ADRV.

## Accusations by western swimmers

Despite the violation being ruled unintentional, and the medication generally considered not performance enhancing, the incident was taken by some swimming competitors as proof of Sun Yang's guilt. At the Rio 2016 Olympics, Australian swimmer Mack Horton [refused](#) to shake hands with Yang after the 400 metre freestyle. Horton went on to imply Yang was a "drug cheat" in the press conference.



More recently, South African swimmer **Chad LeClos** [condemned](#) Sun Yang and commented on his loss to Yang in the Rio Olympics 200 metre freestyle. “We’ve all known that he’s a dirty swimmer.... I was ahead by a long way with 50m to go in that race, but Sun Yang came past me. He was the only man who did that, and that says it all really. ...Sun passed me like I was standing still in the last 25m , which is unheard of.”

The [video](#) of the 200 metre freestyle shows what really happened. As the race commentators remarks, Chad LeClos dove too deep in the final turnaround and “had used up much of his energy already”. Le Clos’s accusations are baseless. He barely hung on to win second place, with Conor Dwyer just three hundredths of a second behind.

Sun Yang’s swimming has been remarkably consistent. For example, his 200 metre freestyle times at world competitions are:

- 2010 Asia Games - 1:46:25;
- 2012 London Olympics - 1:44:93;
- 2014 Asia Games - 1:45:23;
- 2016 Rio Olympics - 1:44:65;
- 2018 Asia Games - 1:45:43;
- 2019 World Athletics - 1:44:93

Horton has no evidence, but somehow “knows” that Sun Yang is doping. He claims his stance is not personal or due to national prejudice. Yet when it’s an Australian accused, his attitude is very different. . As described [here](#), “*Horton was far quieter after Australian swimmer Shayna Jack failed a drugs test on the eve of the World Championships last year*”. As shown in the video, Mack walks away when asked about it.

### **SunYang’s second anti doping rule violation**

Although the court ruling has just been released, the incident which it revolves around happened in 2018. At around 10 pm on 4 September 2018, a three person team from International Doping Tests & Management (IDTM) arrived at Sun Yang’s home. Their mission was to collect Out of Competition blood and urine samples from the athlete.

Sun Yang recognised the Doping Control Officer (DCO) from a similar test the year before.

That test had been so abnormal that Sun Yang filed a written complaint about the officer. But they proceeded and it was going normally until Sun Yang observed the assistant surreptitiously photographing him during the blood collection. Considering this to be very unprofessional conduct, he asked to review their documentation.

The assistant had no credentials, just a Chinese identity card. The nurse who drew the blood had a junior nursing certificate but nothing to identify her with IDTM or another official agency.

Sun Yang phoned his doctor and swim team captain for advice. They agreed the documentation was inadequate. After hours of debate and argument, it was agreed the test was aborted but what to do about the existing blood sample? The Doping Control Officer said they could not leave without the equipment. Sun Yang and his advisors said they could not allow the blood sample to go to unauthorised persons. So the bottle holding the blood sample container was broken, as the only way for Sun's advisors to keep the blood sample.

There are conflicting accounts whether the doping control team conveyed the seriousness of the situation and possible consequences. What is clear is that Sun Yang was following the instructions of his doctor (who arrived on site) and the doctor was following the advice of a senior Chinese doctor and doping control expert. Sun Yang believed he was in the right and, moreover, he thought he had agreement from the Doping Control Officer that it was an aborted test.

### **FINA Doping Panel says Sun Yang did not commit a doping offence**

After the incident there were conflicting reports from the collection agency (IDTM) and Sun Yang about what happened. The world swimming federation (FINA) convened a Doping Panel to consider the case.

On 3 January 2019, the world swimming federation FINA (Federation Internationale de Natation) Doping Panel issued its [Decision](#). It agreed that the IDTM team did not have proper documentation and that Sun Yang had NOT been given sufficient warning that his actions could be considered a refusal to comply. The FINA Doping Panel ruled, 'There is no room for ambiguity' and determined that Sun Yang had not committed an anti-doping rule violation.

### **WADA decides to appeal the decision**

The World Anti Doping Agency (WADA) was [reportedly](#) 'furious' over the FINA Doping Panel decision to absolve Sun Yang. They decided to file a costly appeal at the Court of Arbitration for Sport (CAS). The goal was to overturn the FINA Doping Panel decision, and the Agency sought to impose a harsher penalty on Sun Yang.

Why would WADA do that? The headquarters are in Montreal Canada and its officers are predominately European, Canadian and Australian. Is this a factor? Possibly. They also are subject to media pressure. At the 2019 Swimming World Championship, Australian swimmer Mack Horton [refused to stand on the podium](#) alongside Sun Yang. Podium protests and unproved accusations about "cheating" get a lot of press and very little criticism.

### **Court of Arbitration for Sport (CAS) Decision**

The Court of Arbitration for Sport (CAS) is based in Switzerland. In the Sun Yang case, there

was one judge from Italy and two from the UK.

CAS announced its decision on 28 February 2020: 'Sun Yang is found guilty of a doping offense and sanctioned with an 8-year period of ineligibility'. The following week, it published the [78 page explanation](#). On the critical areas where FINA determined Sun Yang was **not** guilty, they said he was.

They said the IDTM documentation was sufficient, the blood sample was valid and by breaking the enclosure to keep the blood container, he 'tampered' with it. Furthermore, they said Sun Yang was given adequate warning about the consequences.

They acknowledged the eight year ban is 'harsh', but suggested WADA rule changes in 2021 will allow other athletes facing a similar situation to benefit from a reduction in the penalty.

### **Was the Decision fair?**

This case comes down to the question of whether or not Sun Yang had legitimate cause to interrupt the test. The following are important factors:

1) Sun Yang is one of the swimming world's **most tested** athletes. On average, he has been tested every two weeks for the past eight years: 180 times in total. He had negative doping tests shortly before and after the aborted test; he was tested on 15, 19, 20, 21 and 24 August plus 28 September in 2018. The incident on 4 September 2018 is the **ONLY** time he stopped the test. If he had something to hide, he could have avoided the test and recorded a whereabouts violation (three are allowed in a 12 month period).

2) Sun Yang did not question the team's authority until the problems began. He began to suspect the test team was not legitimate when the assistant began photographing him. That was proof that the assistant had not been properly trained. Then Sun Yang discovered the assistant had no IDTM documentation and neither did the nurse.

3) There is good reason to require that an entire test team be properly trained and certified. An athlete's blood sample is precious. A test could be falsified or a blood sample spiked with a prohibited substance. A faulty or manipulated doping test could destroy a career.

4) Sun Yang offered to complete the test with a properly accredited doping control assistant (DCA) . This was an easy way to solve the standoff, but the Doping Control Officer refused, presumably at the instruction of the IDTM supervisor in Sweden.

5) The Doping Control Officer was a key player in this controversy. Given that Sun Yang had previously complained about this individual, she may have been antagonistic and motivated against Sun Yang. Why did IDTM send the same person?

6) In an era where international sports involve huge amounts of money and politics, there is need for strict regulation of private contractors who are managing the testing. There is possibility of corruption and malfeasance. [IDTM](#) is a private Swedish company that [merged](#) with a private US company (Drug Free Sport) in 2018. The testimony of a WADA official at the hearing indicates there is little supervision of the testers and little protection of athletes' rights. They argued that testers do not need to show authorisation for the test of a certain athlete during a certain time period. Theoretically, any of the 500 IDTM Doping Control Officers could show up any time and conduct a test without needing to show anything more. This private company even manages [Therapeutic Use Exemptions](#) with

*“quick turnaround times of less than 48 hours.”* The potential for corruption is obvious.

7) The sensational reports of the blood vessel being smashed are misleading. It was the bottle enclosing the blood container. The blood containers with Sun Yang’s blood from that night are undamaged and still stored under hospital refrigeration. They have been preserved so that they could be tested by appropriate authorities.

8) The CAS panel appeared to make presumptions about Sun Yang. This is evidenced by their gratuitous speculation about his personality. They say, *‘The Athlete appears to have a forceful personality, and seems to have an expectation that his views should be allowed to prevail’*. They say, *‘At no point did the Athlete express any regret as to his actions, or indicate that, with the benefit of hindsight, it might have been preferable for him to have acted differently’*. Yet Sun Yang was never asked this question. Instead, he was asked why he acted as he did. Finally, the panel accuses Sun Yang of *‘shifting blame’* instead of acknowledging that he was following the advice of the swim team captain and doctor. Cultural factors may be involved.

9) Sun Yang’s testimony and statement were unclear because of poor translation. Here again, it appears that the CAS panel was unfairly critical of the 28 year old swimmer. The CAS panel castigates Sun Yang for his effort to bring a better translator during his closing remarks. As shown in the [video part 4](#), at 2:29:00, when the translator was struggling with the translation, Sun Yang signalled and a man came forward and said *“I was requested by Sun Yang’s team to play a supportive role in translation”*. The panel chair says *“I hope the parties will not object if you support a better translation. You can go ahead please.”* But then there is disagreement and in its Decision, the CAS panel accuses Sun Yang of not respecting *‘the authority of others or established procedures’*. In contrast with this wild accusation, Sun Yang’s demeanour appears respectful and sincere.

10) One of the most important witnesses was the WADA staff member who interpreted the Standards. It could be argued he had a conflict of interest, because WADA was the appellant in the case. He stated that it would be *“too onerous”* to require testers to have documentation specifying the name of the athlete to be tested, the time and the responsible Doping Control Officer. This makes no logical or practical sense. It should be easy to create an appropriate document that also would serve as a receipt for the athlete. The WADA staff member made excuses and confused the situation, pretending that there could not be separate forms depending on whether it is In Competition (when testing is performed on winners not known in advance) or Out of Competition (when the testers go to an athlete’s house or workplace).

## **Conclusions**



ISTI

## **Blood Sample Collection Guidelines**

There should not be ambiguity regarding the requirements for a collection team. Currently the requirements in the [International Standards for Testing and Investigation](#) (ISTI), written by WADA, are different than those set out in the [WADA Guidelines](#). There is debate and confusion over the semantics in the ISTI. The CAS determined that the accreditation and documentation for the test team was sufficient, while the FINA Doping Panel concluded the opposite. It was not just Sun Yang and his team that believed the test team did not have proper credentials; the FINA Doping Panel agreed with them.

There should not be ambiguity whether an athlete has been warned about a 'failure to comply'. The CAS determined that the Doping Control Officer issued an adequate verbal warning to Sun Yang. The FINA Panel determined the opposite. It is clear from the proceedings that Sun Yang did not realise this. The FINA panel raised the important point that there is no room for ambiguity on this issue and that is why it is essential to have a written 'refusal to comply' form. The [Blood Sample Collection Guidelines](#) indicate that a written notice is required. 'The DCO shall endeavor to obtain Witness signatures to confirm the Athlete's refusal', they read. These Guidelines have ISTI on the title page and the introduction says they 'expand upon' the ISTI. This confirms it is already a requirement, in contradiction of the CAS ruling.

All test personnel visiting an athlete's private residence should be trained and certified with appropriate proof. They should also be required to show the mission order including the DCO, the athlete's name and time period. The idea that a generic letter of certification should be sufficient opens the door to malfeasance.

IDTM has 500 Doping Control Officers with certifications. Without this requirement, any of these DCO's could go to Sun Yang's house any time. The test team is on a mission costing thousands of dollars involving the invasion of an athlete's privacy. The WADA officer statement that it is "too onerous" for test contractors to provide this documentation is not credible.

The ambiguities and unclear requirements specified above played a huge part in this case. The result is that Sun Yang has been unfairly convicted of an anti doping rule violation. This is a travesty of justice that damages the anti-doping movement and Olympic spirit.

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