

**Arbitration CAS 2008/O/1455 Boxing Australia v/AIBA, award of 16 April 2008**

Panel: Prof. Massimo Coccia (Italy), President; Mr Michael Beloff QC (United Kingdom); Prof. Petros Mavroidis (Greece)

Boxing

Olympic Qualification System applicable to Oceania for the 2008 Beijing Olympic Games

Invalidity of the alteration of the Olympic Qualification procedure by AIBA with retrospective effect

- 1. The Olympic Qualification System sets out an Olympic qualification process based on separate continental qualifying tournaments. The clear reference in the Olympic Qualification System to “the” continental championships of Oceania means that the Olympic pathway for Oceania national federations and their boxers must necessarily go through the annual Oceania Championships rather than through an ad hoc event. In April 2006 AIBA exercised its discretion by differentiating Oceania from the other continents and enacting, with the IOC’s approval, a clear-cut rule stating that the Oceania Championships must serve as the 2008 Olympic qualifiers.**
- 2. The attempt of an International Federation to alter the Olympic qualification process with retrospective effect at a late stage – a few months before the Olympic Games – would violate the principle of procedural fairness and the prohibition of *venire contra factum proprium*. The doctrine, recognized by Swiss law, providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party. The International Federation might have legitimately changed the Olympic qualification process for Oceania, if it had done so prospectively and following its proper legislative procedures. Crucial considerations of procedural fairness towards its members require international federations to announce at a reasonably early stage the Olympic qualification process and not to alter it when the national federations and their athletes have already started the sporting season leading to the Olympic Games.**

The Claimant, Boxing Australia Incorporated (“Boxing Australia” or the “Claimant”), is the Australian boxing federation, incorporated under the laws of Australia with headquarters in Victoria, recognized by the Australian Sports Commission and the Australian Olympic Committee (AOC), and affiliated to the Respondent.

The Respondent, International Boxing Association (AIBA or the “Respondent”), is an association formed under the laws of Switzerland with headquarters in Lausanne, recognized by the

International Olympic Committee (IOC) as the international federation governing the sport of boxing worldwide.

The background facts stated herein are a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and of the evidence examined in the course of the proceedings. Additional facts will be set out, where material, in connection with the summary of the parties' positions and the discussion on the merits.

In April 2006, AIBA issued with the IOC's approval a document (the "Olympic Qualification System") setting forth the boxing qualification rules for the 2008 Beijing Olympic Games. The Olympic Qualification System was notified to all National Olympic Committees (NOCs) and all AIBA's member federations.

The Olympic Qualification System specifically provides that a total of 286 athletes may qualify for the eleven Olympic weight categories, each NOC being allowed to enter into the Olympic Games no more than one boxer in each weight category.

The Olympic Qualification System provides that 80 boxers qualify to the Olympic Games through the 2007 AIBA World Boxing Championships, two boxers receive "wild cards", and the remaining 204 boxers qualify "on a continental basis at two qualifying events in America, Africa, Asia and Europe and at the continental championships in Oceania" (reserving within such quota 6 boxers to the host nation China if not otherwise qualified).

The Olympic Qualification System further specifies that, after the AIBA World Boxing Championships of "Nov/Dec 2007", there are as "Olympic Qualifying Tournaments":

- Two dedicated events to be organized in each of the major continents; America, Africa, Asia and Europe
- The continental championships of Oceania".

The continental apportionment of slots for the Beijing Olympic boxing tournament, set forth by the Olympic Qualification System, grants 60 slots to Africa, 53 slots to Asia, 91 slots to Europe and 60 slots to America, each continent having multiple slots for each weight category. Oceania is granted 11 slots, that is one slot for each weight category.

The Oceania Championships are organized and sanctioned by the Oceania Boxing Association (OBA), that is the continental boxing federation officially recognized by AIBA under art. IX of the AIBA Articles of Association ("The Executive Committee of AIBA shall recognize as the governing body one Continental Association in each Continent, which must observe the Rules and Constitution of AIBA and organize on this basis the activities for the promotion of Boxing. This recognized body shall work under the guidance of the Executive Committee and Continental Bureau of AIBA and follow all its directives in accordance with the AIBA Articles and Rules. Members of the Continental Association must be National Associations of boxing affiliated to AIBA").

In accordance with article 2 of the OBA Constitution, OBA comprises as members all national boxing federations listed by AIBA as pertaining to the Oceania Continent ("Membership shall comprise all those Members within the Oceania Zone, as defined by the AIBA, who apply for and are granted Membership

[...]”). Currently, 13 national federations are included by AIBA in the Oceania Continent and are thus OBA members.

Art. 10 of the OBA Constitution deals with the Oceania Championships and provides, in particular, at art. 10(a) that they “*shall be held annually*” and at art. 10(c) that “[*e*]ach Member Association may enter two (2) boxers in each weight category”.

During the Summer of 2007 Boxing Australia set up its own domestic qualification system, relying on the Olympic Qualification System, and in particular on the provision that the 2008 Oceania continental championships (the “Oceania Championships”) would be used as the continental Olympic qualifying tournament.

On 11 December 2007, the AIBA Executive Director Mr Ho Kim, who had held that post since November 2006 and was the appointee of Mr Ching-Kuo Wu, elected as President of AIBA in November 2006 on a reform platform, learned for the first time from the OBA Secretary General (and Chairman of the AIBA Finance Commission) Mr Adi Narayan that at the Oceania Championships Australia was going to enter two teams, i.e. two boxers for each weight category. On the same day Mr Ho Kim informed Boxing Australia that all national federations were allowed to enter only one boxer in each weight category and that it was “*absolutely impossible for any country to enter with two teams*” in the Olympic qualifying tournament.

On 19 December 2007, the Chairperson of Boxing Australia, Mr Ted Tanner, replied as follows: “*no doubt you are aware of AIBA’s published participation criteria for athletes to participate in the Beijing Olympics and its requirement for Oceania athletes to qualify through the Oceania Continental Championships and in relation to those Championships Article 10(c) of Oceania’s Constitution which states ‘Each Member Association may enter two (2) boxers in each weight category’. Boxing Australia has relied on those documents when putting in place an Olympic Pathway for Australian athletes. Please understand that any attempt by any party to retrospectively alter those requirements cannot be accepted by Boxing Australia*”.

On 20 December 2007, Mr Ho Kim so wrote to Boxing Australia: “*There have been misunderstandings on your part in regard to use the Continental Championships as the Qualifying Events. [...] this does not mean that the guidelines and regulations of the Oceania Continental Championships will overrule the guidelines and principles of the Olympic Qualifying Tournament. It should be the other way around*”; “*the Olympic Qualifying Tournament is AIBA’s event, not the continental’s event. This is nothing to do with the Oceania Continental Association which the Olympic Qualifying Events will not be run by its continental association constitution. AIBA asked AIBA Continental Bureaus to manage the event on behalf of AIBA for all Qualifying Events following AIBA’s regulations and guidelines. We want to inform and emphasize this matter to you to help you understanding the principles of the event. Following the guidelines for this event agreed between IOC and AIBA, only one boxer can participate in each weight category*”.

In the ensuing discussions between Boxing Australia and AIBA neither side was prepared to modify its position.

On 12 February 2008, while this arbitration was pending, the OBA Secretary General Mr Narayan sent an e-mail to all Oceania national federations advising as follows: “*I am directed to inform you all that*

the Oceania Continental Boxing Championship that was to be used as the Qualifying Round for the Beijing Olympic will not be held in Australia, as was the indication given earlier. Another venue is being sought in the region, and you will be informed when agreement has been reached. Please note there will not be Oceania Boxing Championships but it will be billed as the Oceania Continent Olympic Qualifier held under the jurisdiction of AIBA rules and regulations”.

On the same day, Mr Tanner answered as follows on behalf of Boxing Australia: *“Further to your email communication of 12 February and its advice that there will not be an ‘Oceania Boxing Championships’ but an ‘Oceania Continental Olympic Qualifier’, I request your advice as to when this decision was made, who made the decision, and in the event the decision was not made under a provision in the Oceania Boxing Association Constitution by what other authority was it made”.*

On 13 February 2008, Mr Narayan replied to Boxing Australia: *“You are well aware of the impasse in the Oceania Continental tournament issues. I took the directive from the AIBA headquarters Mr Ho Kim. Let us not forget that AIBA is the supreme authority, hence the compliance. Trust this answers your query”.*

On 17 February 2008, Mr Narayan wrote again to all Oceania national federations, stating *inter alia* as follows: *“Apia, Samoa has been confirmed as the host to hold the OCEANIA CONTINENTAL QUALIFYING TOURNAMENT for Beijing Olympics. Please note this is not the Oceania Championships but Qualifying Tournament for the Olympics. It will be conducted in compliance with the AIBA Rules and Regulations. I will be advising all Oceania member countries in due course”.*

Also on 17 February 2008, the following announcement appeared on the AIBA’s official website: *“The AIBA Vice-President from Oceania Mr. Lobial Nuan also confirmed that Samoan capital Apia will be the new host city of the Oceania Olympic Qualifying tournament, which will run from April 21-25. The location and timing of the Oceania Continental Championships are still to be confirmed”.*

On 20 February 2008, in response to an enquiry submitted by the AOC, Mr Christophe Dubi, Director of the Sports Department of the IOC, informed that *“no formal request by AIBA regarding late change in the Oceania Olympic qualifying criteria has been made at this point to the IOC. We are aware of the ongoing discussions between AIBA and the Oceania Boxing Association, as well as the decision of the parties to seek CAS resolution”.*

On 9 January 2008, Boxing Australia filed with the Court of Arbitration for Sport (“CAS”) a request for ordinary arbitration pursuant to Article R38 of the Code of Sports-related Arbitration (the “CAS Code”).

On 29 January 2008 AIBA filed its response to the request for arbitration.

On 15 February 2008 Boxing Australia filed with the CAS its statement of claim and on 22 February 2008 an addendum to the statement of claim. On 26 and 29 February 2008, Boxing Australia submitted further documents.

On 29 February 2008, AIBA submitted its answer brief.

On 14 March 2008, AIBA filed with the CAS a further submission with documents attached.

LAW

Jurisdiction and Applicable law

1. The jurisdiction of the CAS in the present matter is not disputed and is based on Articles 59 and 60 of the AIBA Statutes, together with Article XXXVIII of the AIBA Articles of Association, and has been confirmed by the parties' signature of the Procedural Order dated 17 March 2008.
2. It follows that the CAS has jurisdiction to decide the present dispute.
3. As to applicable law, pursuant to Article R45 of the CAS Code, the Panel "*shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law*".
4. The Panel notes that the parties have explicitly and implicitly accepted that this dispute is governed by the Olympic Charter and by AIBA rules and regulations, including therein the Olympic Qualification System. The Panel also notes that the AIBA Statutes explicitly state that AIBA "is an association in accordance with Article 60 ff. of the Swiss Civil Code" (art. 1.1) and that the parties have also made reference to Swiss law and general principles of law in their pleadings.
5. As a result, the Panel holds that the present dispute must be decided applying primarily the Olympic Charter and AIBA rules and regulations and, complementarily, Swiss law and general principles of law.

Merits

6. The present dispute raises two main issues for this Panel to decide:
 - (i) Is AIBA obliged to use the 2008 Oceania Championships as the Oceania boxing qualifying tournament for the 2008 Beijing Olympic Games?
 - (ii) If the answer to the first question is in the affirmative, is the Claimant entitled to enter into such qualification tournament two boxers (the "two entry rule") or only one boxer (the "one entry rule") in each weight category?
7. At the outset, the Panel observes that it is common ground between the parties that the Olympic Qualification System is the basic normative document binding the parties to this dispute as well as all other concerned third parties – the IOC, all NOCs and all other national

boxing federations – with regard to the qualification of boxers for the 2008 Beijing Olympic Games.

8. It is also undisputed that the Olympic Qualification System was drafted and adopted pursuant to the Bye-law to Rule 47 of the Olympic Charter, which includes the “[e]stablishment, three years before the Olympic Games, of the system for qualifying preliminaries” among the “TF proposals requiring the approval of the IOC Executive Board”.
 - (i) *The Oceania boxing qualifying tournament for the 2008 Olympic Games*
9. The Panel notes that the Olympic Qualification System sets out an Olympic qualification process based on separate continental qualifying tournaments. The Olympic Qualification System makes a clear distinction between America, Africa, Asia and Europe, where the qualifying tournaments must be “two dedicated events” for each continent, and Oceania, where the only qualifying tournament must be “the continental championships of Oceania”.
10. It is the Panel’s view that the clear reference in the Olympic Qualification System to “the” continental championships of Oceania means that the Olympic pathway for Oceania national federations and their boxers must necessarily go through the annual Oceania Championships rather than through an ad hoc event.
11. The Panel acknowledges that AIBA possesses in principle substantial discretion to devise a different Olympic pathway and determine, subject to the IOC’s approval, that Oceania – like the other continents – organise a dedicated event to be used as the Oceania Olympic qualifying tournament.
12. However, in April 2006 AIBA exercised its discretion by differentiating Oceania from the other continents and enacting, with the IOC’s approval, a clear-cut rule stating that the Oceania Championships must serve as the 2008 Olympic qualifiers.
13. The Panel notes that the Olympic Qualification System has not been superseded by any subsequent AIBA regulation concerning the Olympic qualifications, whether approved by the IOC or not.
14. As noted, when this arbitration was already pending, AIBA attempted to unilaterally depart from the Olympic Qualification System. In fact, in February 2008, an e-mail sent on behalf of AIBA to all Oceania national boxing federations communicated that the Olympic pathway would go through a dedicated ad hoc continental tournament (the “*Oceania Continent Olympic Qualifier*”) rather than through the established Oceania Championships.
15. Even without putting on one side the need for the IOC’s approval (of which there was no evidence) mandated by the Olympic Charter (see *supra* at 0), the Respondent was unable to identify to the Panel any resolution, properly adopted by the AIBA Executive Committee or

by any other AIBA body in accordance with AIBA statutes, formally implementing a new qualification process for Oceania.

16. In any event, even if the Respondent had properly and formally enacted a resolution adopting a new qualification system, the Panel is of the opinion that an attempt to alter the Olympic qualification process with retrospective effect at such a late stage – a few months before the Olympic Games – would violate the principle of procedural fairness and the prohibition of *venire contra factum proprium* (the doctrine, recognized by Swiss law, providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party).
17. The Panel takes comfort from the fact that its opinion on this issue is consistent with the case law of CAS on comparable issues.
18. For example, in CAS 98/200, the CAS panel stated that *“a sports-governing organization such as an international federation must comply with certain basic principles of procedural fairness vis-à-vis the clubs or the athletes, even if clubs and athletes are not members of the international federation [...]”. The Panel does not find a hurried change in participation requirements shortly before the beginning of the new season, after such requirements have been publicly announced and the clubs entitled to compete have already been designated, admissible”*.
19. In the same award (CAS 98/200), the panel further observed that *“under CAS jurisprudence the principle of procedural fairness is surely among the unwritten principles of sports law to be complied with by international federations [...]”. The Panel has already found that UEFA violated its duty of procedural fairness because it adopted the Contested Rule too late, when the Cup Regulations for the 1998/99 season, containing no restriction for multiple ownership, had already been issued and communicated to the interested football clubs”*.
20. In CAS 2002/O/410, the panel stated as follows: *“Even if the New Rule was to be regarded as a rule dealing only with procedural aspects, the Panel is of the opinion that its application in this matter would entail a violation of general principles of law which are widely recognised, particularly the principles of fairness and of good faith. In particular, the Panel refers to the principle of venire contra factum proprium. This principle provides that when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party”*.
21. In CAS OG 02/006, the CAS panel applied the doctrine of estoppel, defining it as a general principle of law *“firmly established in common law and known in other legal systems even though under a different heading (e.g. reliance in good faith, venire contra factum proprium) [...] that arises when one makes a statement or admission that induces another person to believe something and that results in that person’s reasonable and detrimental reliance on the belief [...]”. By accepting the entries for the two athletes for both Slalom and Giant Slalom, SLOC induced them to prepare and train for both disciplines for which they were properly entered. To exclude them from competing in these two disciplines at this late stage would be unfair and contrary to the above doctrine of estoppel”*.

22. In view of the above, the Panel is of the opinion that the Respondent might have legitimately changed the Olympic qualification process for Oceania, if it had done so prospectively and following its proper legislative procedures. The Panel notes that the Olympic Charter requires international federations to propose to the IOC their qualification systems *“three years before the Olympic Games”*. Even if this term was not to be intended as a strict deadline, it is nonetheless a clear indication that crucial considerations of procedural fairness towards its members require international federations to announce at a reasonably early stage the Olympic qualification process and not to alter it when the national federations and their athletes have already started the sporting season leading to the Olympic Games.
 23. As a result, by majority vote, the Panel holds that AIBA and its members must comply with the Olympic Qualification System and, accordingly, orders AIBA to organise as soon as convenient, in a location of its choice, the 2008 Oceania Championships and to use such competition as the Oceania boxing qualifying tournament for the 2008 Beijing Olympic Games.
- (ii) *The “two entry rule” vs. the “one entry rule”*
24. The Olympic Charter does not specify the number of entries per country allowed at qualifying events. The Olympic Charter only sets a threshold for the actual Olympic Games: *“The number of entries in the individual events shall not exceed that provided for in the World Championships and shall, in no event, exceed three per country. The IOC Executive Board may grant exceptions for certain winter sports”* (Bye-law to Rule 45, para. 11).
 25. Therefore, the number of athletes that each NOC may enter into the same individual sport event at the Olympic Games varies from one to three (unless a specific exception is granted for some winter sports), depending on the specific rules adopted for each sport by the competent international federation. *A fortiori*, the number of athletes that each country is allowed to enter into qualifying events may also vary depending on the particular rules and needs of each international federation.
 26. The Olympic Qualification System does not specify the number of boxers each national federation may enter in each weight category at the four major continents’ dedicated Olympic qualifying tournaments nor at the Oceania Championships. Hence, the Respondent submits that it was entitled to freely determine the number of entries allowed and to impose the one entry rule in Oceania as a legitimate clarification rather than as a change in the rules.
 27. However, in the Panel’s opinion, the unambiguous reference in the Olympic Qualification System to *“the”* continental championships of Oceania reasonably induced the Claimant to entertain a legitimate expectation that the Oceania Championships would have the same pattern as the previous ones and would be held under the same rules.
 28. It is undisputed that previous Oceania Championships, including when they have served as Olympic qualifiers (i.e. every fourth year), have been held in accordance with art. 10 of the

Constitution of OBA, that is the continental association recognized by AIBA as the governing body of Oceania (see art. IX of the AIBA Articles of Association, quoted *supra* at 0). As the OBA Constitution has been accepted long ago by the thirteen national federations of Oceania and AIBA has never objected to it, it is a document of a contractual nature binding all those federations and recognized by AIBA as a regulation applicable in Oceania.

29. In particular, Article 10(c) of the OBA Constitution sets forth the two entry rule, reading as follows: *“Each Member Association may enter two (2) boxers in each weight category”*. It is not contested by the Respondent that, pursuant to such a rule, in past Olympic qualifiers the Claimant has been entitled – like all other national boxing federations of Oceania – to enter two boxers in each weight category, and it has in fact availed itself of this opportunity.
30. The Respondent submits that this happened before the current AIBA administration came into office and that the two entry rule was tolerated by the old AIBA administration, but that since the change of regime the one entry rule is to be applied worldwide in order to preserve a universal level playing field.
31. However, the Panel could not find any provision in the AIBA statutes or regulations expressly requiring the application of the one entry rule in the Olympic qualifying tournaments or in continental championships. During the course of the hearing, the AIBA Executive Director Mr Ho Kim was asked by the Panel to indicate which AIBA provision forbids a national federation from entering more than one boxer per weight category in the Olympic qualifying tournaments. Mr Ho Kim was unable to point the Panel to such a provision but explained however that it was a practice customarily followed in the Olympic qualifying tournaments of the four major continents.
32. It seems to the Panel that it is contradictory to assert that one past practice followed in Oceania under the old AIBA administration cannot be relied upon and, at the same time, that another past practice followed in the other four continents under the same old AIBA administration can be. The contradiction appears still starker in the light of the declared purpose of the new AIBA administration to extend such one entry practice of the four major continents, incorrectly characterized as a “rule”, to Oceania.
33. It is the Panel’s view that, given that an AIBA provision imposing the one entry rule (or even a universally followed practice) did not and does not exist, it was entirely reasonable for the Claimant to expect that the Oceania Championships – i.e. the Oceania Olympic qualifying tournament – would be held and organised, as done in the past, under the ordinary rules and practices of Oceania, including the right of each national federation to enter two boxers in the annual continental championships.
34. The Panel is of the opinion that the Respondent, absent any language to the contrary in the Olympic Qualification System, did possess the discretion to determine which entry rules to apply at continental qualifying events. Therefore, the Respondent was certainly entitled in appropriate circumstances to depart from past entry practice followed in Oceania and to adopt a provision explicitly setting forth the one entry rule for all five continents, so

superseding art. 10(c) of the OBA Constitution. However, there is no indication by AIBA that it properly and timeously exercised such discretion.

35. Paramount considerations of legal certainty require that an international federation exercises its normative discretion by adopting resolutions or regulations in proper compliance with the formal procedures set out by its own statutes. International federations are undoubtedly subject to the rule of law. It is not permissible for an international federation bluntly to communicate by e-mail that it does not like a given rule in force at continental level and demand the national federations of that continent to simply disregard such rule even though it binds them contractually.
36. The Panel points out that, had AIBA wished to adopt a provision clearly imposing the one entry rule in all five continents, it should have enacted and publicized such provision at a reasonably early stage and, at any rate, prior to the beginning of the sporting season leading to the Olympic Games. If that had been the Respondent's approach, the Panel would have had no hesitation in rejecting Boxing Australia's claim. However, the failure to properly and timeously adopt and publicize the one entry rule compels the Panel to find that the Respondent is estopped from imposing the one entry rule once the sporting season leading to the Olympic Games has started, in accordance with the general principles of procedural fairness and *venire contra factum proprium*.
37. As a result, by majority vote, the Panel holds that the Claimant, as well as any other national boxing federation of Oceania, is entitled to enter two boxers in each weight category at the next Oceania Championships, to be used as the Oceania Olympic qualifying tournament.
38. Notwithstanding the fact that Boxing Australia's claim is being upheld, the Panel wishes to make clear that it does not suggest that AIBA's position as a matter of policy, expressed in the briefs and in the President C.K. Wu's affidavit is not a tenable one. It is certainly desirable for an international federation to pursue a level playing field for all continents and to provide equal chances for all national federations and athletes.
39. Nonetheless, the ways and means to pursue such level playing field may vary from sport to sport and from period to period. The number of individual entries per country allowed at international competitions is a good example of the different solutions – one, two or three athletes – adopted by different international federations. Indeed, such a matter of sporting policy is best left to the governing bodies of every sport. As stated in another CAS award, the "*CAS cannot substitute its own judgment for that of sports bodies with regard to policy choices*" (CAS 2003/O/466).
40. However, in order to avoid any risk of uncertainty and arbitrariness, the policy choices of an international federation must necessarily be translated into rules and regulations, correctly adopted – as to both form and substance – and properly and timeously publicized. In particular, national federations and NOCs must be advised reasonably in advance and with full details of the applicable Olympic qualification rules, so that they may have all the time and

information needed to set in place a fair selection process at national level. The IOC's carefully crafted letter of 20 February 2008 (see *supra* at 0) is instructive in this context.

41. The Panel does not concur with the Respondent's contention that, even if the entry system is not detailed in its rules, the application of the same entry rules in all continents is an "*implied assumption*" based on the fundamental value of equal treatment. As the equality principle allows unequal treatment of different situations, as long as such treatment is reasonable and justifiable, it seems to the Panel that often equal treatment is in the eyes of the beholder; therefore, application of implied assumptions of equal treatment can lead to diverse answers, and is an infirm basis for bypassing unambiguous legal provisions.
42. The Panel wishes again to make clear that it shares the Respondent's preference for equal treatment and it believes that the requirement of a level playing field is a *lex sportiva* principle to be respected by all sports governing bodies and protected by the CAS. However, the Panel is of the opinion that the principles of equal treatment and level playing field must be seen within the specific context of each sporting event. With regard to the Oceania Olympic qualifiers, it seems to the Panel that, as all national federations are entitled to enter the same number of athletes and, in any event, only one boxer per weight category qualifies for the Olympic Games, the level playing field principle is fully respected.
43. After all, AIBA itself set out a system where the qualifiers of the four major continents and of Oceania are differentiated, and where some boxers will qualify for the Olympics because they will be awarded wild cards. It is difficult to see application of a principle of equal treatment, as understood by AIBA, when comparing a boxer who qualifies through a very strenuous competitive process – e.g. through the European qualifiers – and another who qualifies without strain or competition owing to a wild card.
44. It is also to be noted that – as clarified by Mr Ho Kim during the hearing – the national federations of the four major continents will be entitled to enter a given boxer in the first qualifying tournament and, if that boxer fails to qualify, to enter a different boxer in the second qualifying tournament. Therefore, even under the one entry rule applied in the four major continents, several national federations will end up giving a chance of qualification to two of their boxers in each weight category.
45. The Panel repeats, however, that the outcome of this arbitration turns on law, not policy, upon interpretation of the various legal instruments which govern qualification in the sport of boxing for the Beijing Olympic Games, and not upon the Panel's views (which are not necessarily unanimous) as to what such instruments should, in an ideal world, provide.
46. The Respondent also submits that the two entry rule would violate the Claimant's own selection rules and the legitimate rights of the Australian boxers who, having won the Australian Championships in the respective weight categories, would be entitled to compete at the Oceania Olympic qualifying tournament as the only Australian boxers. However, the Respondent did not properly rely upon this matter as a counterclaim. In addition, the selection rules are issued in order to regulate the Australian internal selection process and

contractually bind Boxing Australia only vis-à-vis its licensed athletes. The Panel is of the opinion that it is not a matter for the consideration of this Panel to decide whether the Claimant's selection rules have been or will be violated. Should any Australian boxer feel aggrieved by the Claimant's selection process, he will be able to resort to the remedies provided by Boxing Australia, the AOC or the Australian legal system.

47. In conclusion, by majority vote, the Panel holds that the Claimant, as well as any other national federation of Oceania, is entitled to enter two boxers per weight category in the 2008 Oceania Championships, which will function as the Oceania boxing qualifying tournament for the 2008 Beijing Olympic Games. The tournament shall obviously be organised in accordance with the usual Respondent's rules, including those related to the draw of competing boxers.
48. (...).
49. In accordance with Article R43 of the CAS Code, and with the agreement of the parties, the Panel determines that there are reasons of legal certainty and fairness that require that this award be made public.

The Court of Arbitration for Sport rules:

1. The relief requested by Boxing Australia Incorporated against the Association Internationale de Boxe Amateur (AIBA) is granted.
2. AIBA is ordered to comply with its Olympic Qualification System dated April 2006, and, accordingly, to use the 2008 Oceania Continental Championships as the 2008 Olympic Qualifying Tournament for Oceania.
3. AIBA is ordered to allow each member of the Oceania Boxing Association (OBA) to enter two (2) boxers in each weight category at the 2008 Oceania Continental Championships / Olympic Qualifying Tournament, in accordance with art. 10(c) of the OBA Constitution.
4. [...]
5. All other prayers for relief are dismissed.
6. This award may be rendered public.