

EXHIBIT B

Stipulated Facts and Application of the United States Sentencing Guidelines

With regard to sentencing and the application of the United States Sentencing Guidelines, Vitusa Corporation and the United States agree as follows (except where otherwise noted):

1. Vitusa entered in a lawful contract to sell milk powder to the Government of the Dominican Republic.

2. Vitusa's agent for the sale was Horizontes Dominicanos [Horizontes], through its principal, Servio Tulio Mancebo [Mancebo]. Vitusa paid Horizontes a commission rate comparable to that paid to its other brokers in similar commodities transactions. This was the first and only occasion on which Vitusa had any business dealings with Horizontes or Mancebo.

3. Although not required to do so under the terms of the agreement, Vitusa released three shipments of the milk powder to the Dominican Government at its request, without immediate payment, on the promise that payment would be made without delay.

4. Vitusa performed its obligations under the agreement with the Government of the Dominican Republic, however, the Dominican government did not pay Vitusa promptly for the goods received and, in fact, maintained an outstanding balance due for an extended period of time.

5. Beginning in the Fall of 1990, Vitusa undertook a series of communications with officials of the Government of the Dominican Republic in an effort to collect the overdue receivable. Later, in May of 1991, Mr. Herzberg contacted various American governmental officials and entities, including the United States Embassy in Santo Domingo, in an effort to obtain their assistance in obtaining full payment from the Dominican government.

6. At Mancebo's request, Mr. Herzberg agreed to pay a "service fee" to a senior official of the Government of the Dominican Republic, in order to obtain full payment of the balance due. In addition, at Mancebo's request, Mr. Herzberg faxed a letter to the Banco de Reservas on August 11, 1992 authorizing it to transfer a portion of the payment expected from the Dominican government to Mancebo, from which funds Mr. Herzberg further authorized Mancebo to pay the "service fee" to the foreign official.

7. The unlawful payments to the foreign official were made in order to obtain payment of a legitimate and lawful obligation owed by the Government of the Dominican Republic to Vitusa. There was no loss to any party and no individual victim exists.

8. The guidelines appropriate to the particular facts of this case are:

(a) The applicable sentencing guideline for this offense is U.S.S.G. § 2B4.1.

(b) Subsection (c) of § 2B4.1 supplies the calculation to be used to determine the base fine applicable to a corporation convicted of violating the FCPA, instead of the pecuniary loss section of § 8C2.4(a)(3).

(c) Under U.S.S.G. § 8C2.5(a), Vitusa's base culpability score is 5 points.

(d) The government and Vitusa agree that the appropriate fine should be at the lower end of the range, based on the facts and circumstances of this case, and including but not limited to the need for the sentence to reflect the seriousness of the offense, deter further such conduct and adequately punish the defendant; Vitusa's pre-indictment guilty plea; the corporation's and its officers lack of a prior criminal record or criminal activity; and the fact that no individual victim exists. U.S.S.G. § 8C2.8.

9. The United States and Vitusa disagree as to the application of certain guidelines, which disagreements are limited to the following:

(a) Pursuant to § 2B4.1(c), the base fine is the greatest of "(A) the value of the unlawful payment; (B) the value of the benefit received or to be received in return for the unlawful payment; or (C) the consequential damages resulting from the unlawful payment." According to the United States, the base fine should be \$163,000, based on the value of the benefit received. According to the defendant, the base fine should be \$20,000, based upon the value of the unlawful payment.

(b) The government believes that a 1 point enhancement should be assessed because Vitusa had 10 or more employees and its president personally participated in the unlawful activity. U.S.S.G. § 8C2.4(b)(5). Vitusa does not agree with the government's position relating to this enhancement.

(c) The United States and Vitusa agree that Vitusa clearly demonstrated its recognition and acceptance of responsibility by entering a pre-indictment guilty plea and by truthfully acknowledging the conduct comprising the offense of conviction and additional relevant conduct. A 1 point reduction in Vitusa's culpability score, therefore, is appropriate. U.S.S.G. § 8C2.4(g)(3). It is Vitusa's position that it has

VITUSA STIPULATED FACTS and SENTENCING CALCULATIONS

fully cooperated in the investigation of this matter, and therefore an additional 1 point reduction in its culpability score is appropriate. U.S.S.G. § 8C2.5(g)(2). The United States disagrees.

(d) Consequently, it is the position of the United States that Vitusa's total culpability score is 5 points, while it is Vitusa's position that its total culpability score is 3 points.

(e) Based on the government's analysis, using a culpability score of 5, the minimum and maximum multipliers are 1.0 to 2.0. U.S.S.G. § 8C2.6. Based on Vitusa's analysis, using a culpability score of 3, the minimum and maximum multipliers are 0.6 to 1.2. U.S.S.G. § 8C2.6.

(f) Calculated as the base fine multiplied by the minimum and maximum multipliers, the government's position is that the guidelines fine range is between \$163,000 and \$326,000. U.S.S.G. § 8C2.7. Vitusa's position is that the guidelines fine range is between \$12,000 and \$24,000. U.S.S.G. § 8C2.7.