

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	Criminal No.
v.)	
)	15 U.S.C. § 78dd-2
DENNY J. HERZBERG)	(Foreign Corrupt
)	Practices Act)
_____)	

GOVERNMENT'S STATEMENT OF FACTS

The information charges the defendant, Denny J. Herzberg, with one count of violating the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. § 78dd-2(a)(3) [FCPA], by offering, promising and authorizing a payment to an official of the Government of the Dominican Republic in connection with the sale of milk powder to that government. Had this matter gone to trial, the United States would have proven the following facts beyond a reasonable doubt through the testimony of witnesses, authenticated documents and other competent and admissible evidence.

The government's evidence would show that Vitusa Corporation [Vitusa] was a New Jersey corporation engaged in the sale of commodities and other goods in the United States and elsewhere. Denny J. Herzberg [Herzberg] was the President and sole shareholder of Vitusa, and a resident of New Jersey. Both Vitusa and Herzberg were domestic concerns as defined by the FCPA.

The evidence would further show that during or before October 1989, Vitusa entered into an agreement with Horizontes Dominicanos [Horizontes], a broker located in Santo Domingo, Dominican Republic, which was owned and operated by Servio Tulio

Mancebo [Mancebo], a resident of the Dominican Republic. The agreement provided that Horizontes would act as Vitusa's broker for the sale of milk powder to the Government of the Dominican Republic. This relationship between Horizontes and Vitusa was initiated by Mancebo and is the only occasion on which Vitusa dealt with Horizontes to perform services related to a sale in the Dominican Republic or elsewhere.

The evidence would show that in early October 1989, Vitusa contracted to sell 1,500 metric tons of milk powder to an agency of the Government of the Dominican Republic at \$2,200 per metric ton, for a total price of \$3.3 million. Vitusa and Horizontes agreed that Vitusa would pay Horizontes a commission of \$102.00 per metric ton for all milk powder purchased and paid for by the Dominican Government. The commission rate was comparable to that paid by Vitusa to its other brokers in similar commodities transactions elsewhere. Vitusa's contract with the Dominican Republic provided that, if the Government of the Dominican Republic failed to pay for any milk powder within 60 days of delivery by Vitusa, the Dominican Government would pay interest at a rate of the United States prime rate plus one percent on any overdue balance.

The evidence would further show that between October 1989 and January 1990, Vitusa caused approximately 870 metric tons of milk powder to be shipped in three separate lots from a supplier in the Netherlands to a bonded warehouse in the Dominican

Republic. Pursuant to Vitusa's contract with the Government of the Dominican Republic, Vitusa was not required to release the milk powder from the warehouse to the Dominican Government until Vitusa received a wire transfer credit for the amount due at its bank in New Jersey -- United Jersey Bank.

The evidence would show that Vitusa issued three invoices to the Dominican Government for payment corresponding to each of the three shipments. The three invoices totalled approximately \$1,914,000. Between December 1989 and May 1990, the Government of the Dominican Republic paid approximately \$1,762,750 on these first three invoices. Vitusa shipped the final three lots of 630 metric tons of milk powder between March 1990 and May 1990. Vitusa issued three invoices for payment corresponding to each of the final three shipments. These three invoices totalled approximately \$1,386,000.

The United States would prove that in or about May 1990, just prior to elections held in the Dominican Republic, officials of the Government of the Dominican Republic contacted Herzberg, in his capacity as president of Vitusa, and asked him to release the balance of the milk powder without the immediate payment required by the agreement. Notwithstanding that Vitusa was entitled to immediate payment, Herzberg agreed to release the balance of the milk powder stored in the warehouse to the Dominican Government, on the promise that payment would be made without delay.

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The evidence would show that, although the Dominican Government took delivery of the final three shipments of the milk powder in May 1990, it did not pay Vitusa promptly for the goods received and, in fact, maintained an outstanding balance due for an extended period of time. As of November 1990, the Government of the Dominican Republic paid Vitusa approximately \$2,384,580 of the \$3,300,000 contract price and owed Vitusa approximately \$1 million in principal and interest for late payments on the milk powder. The Government of the Dominican Republic did not make any further payments on any of the outstanding balances until July 1991. Throughout the course of its contractual relationship with Vitusa, the Government of the Dominican Republic did not dispute that it had purchased \$3.3 million of milk powder, for which it owed payment in full including accrued interest on late payments.

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. As time passed, interest continued to accrue and the balance due increased. A series of letters followed in early 1991 from Mr. Herzberg, addressed to officials in various agencies of the Government of the Dominican Republic, requesting payment on the balance due.

When his direct efforts with the Dominican government failed to bring about the payment of the past-due balance, Mr. Herzberg

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began contacting various American entities and officials, including his Congressman, the United States Ambassador to the Dominican Republic, and officers of the American Chamber of Commerce in the Dominican Republic. The Congressman in turn also contacted the United States Embassy in Santo Domingo.

The government's evidence would show that in July and September 1991, the Government of the Dominican Republic paid Vitusa approximately \$400,000. During this period, and until the summer of 1992, Mr. Herzberg continued his correspondence with the American and Dominican officials who might appropriately intercede with the Government of the Dominican Republic on his behalf. Herzberg also wrote a letter directly to Dr. Joaquin Balaguer, President of the Dominican Republic and sent a copy to the United States Embassy.

Further, the government's evidence would show that, during this time, Mancebo and Herzberg discussed various methods by which they might obtain the balance due from the Dominican Government. At some point in these discussions, Mancebo communicated to Herzberg a demand made by a senior official in the Dominican Government. This demand called for the payment of a "service fee" to a senior official of the Government of the Dominican Republic in return for the official using that official's influence to obtain the balance due to Vitusa for the milk powder contract from the Dominican Government.

In August 1992, Herzberg had agreed to Mancebo's proposal

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that Vitusa would pay a "service fee" to the senior official of the Dominican Government. As of that month, the balance due to Vitusa was \$163,000. On August 11, 1992, Vitusa transmitted a letter by facsimile to Banco de Reservas de la Republica Dominicana [Banco de Reservas] in Santo Domingo providing instructions on the disposition of the final payments due from the Government of the Dominican Republic. Vitusa's directives to Banco de Reservas authorized the bank to withhold a total of \$50,000 from the payment or payments, which funds the bank was authorized to give to Mancebo, and the balance of which the bank was directed to remit to Vitusa's account at United Jersey Bank.

The evidence would further show that on or about August 11, 1992, the Dominican Government made a payment of \$100,000 to Vitusa and, following Herzberg's directions, Banco de Reservas withheld \$30,000, which it gave to Mancebo. Banco de Reservas transferred the balance of \$70,000 from the \$100,000 payment by wire to Vitusa's account at United Jersey Bank in Hackensack, New Jersey on August 12, 1992.

On August 17, 1992, Herzberg spoke with Foreign Agricultural Service Counselor Michael T. Henney at the United States Embassy in Santo Domingo by telephone. During that conversation, Herzberg told Mr. Henney that a senior official had withheld authorization for the Dominican Government to release the balance due until the final payments had been renegotiated, including the payment of "service fees" to the same unnamed senior official.

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Herzberg further stated to Mr. Henney that Mancebo had related to him that the senior official had proposed that Vitusa would be paid the full balance due in two installments, less "service fees" totalling \$50,000.

On August 18, 1992, after speaking with Embassy officials, Mr. Henney sent a letter to Herzberg by facsimile reiterating the substance of their August 17th telephone conversation and advising Herzberg that the payment of the "service fees" would violate the FCPA. In his letter, Mr. Henney urged Herzberg not to pay the "service fees." On August 24, 1992, Herzberg responded by facsimile and stated that he agreed with Mr. Henney's recommendation and had already made a decision.

The government's evidence would show that on September 3, 1992, the Dominican Government made a payment of \$63,905.12 to Vitusa and, following Herzberg's directions, Banco de Reservas withheld \$20,000, which it gave to Mancebo.

The government would establish that, through Mancebo, Herzberg authorized, promised and offered the payment of money, that is, "service fees" totalling all or a portion of the \$50,000 to the senior foreign official, indirectly, through an associate, while knowing that all or a portion of the money would be given to the foreign official for the purpose of inducing the official to use that official's position and influence with the Government

of the Dominican Republic in order to obtain and retain business, that is, full payment of the balance due for Vitusa's prior sale of milk powder to the Government of the Dominican Republic.

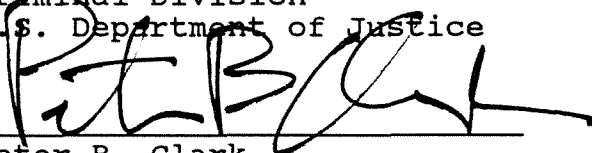
Respectfully submitted,

Michael Chertoff
United States Attorney
District of New Jersey

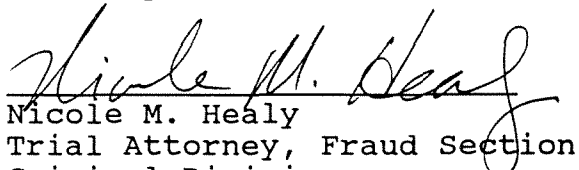


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