

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, Mr. Herzberg and the United States agree as follows (except where otherwise noted):

1. Vitusa entered into 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 applicable guidelines appropriate to the particular facts of this case are:

(a) The sentencing guideline for this offense is U.S.S.G. § 2B4.1. Under that guideline, Mr. Herzberg's base offense level is 8. U.S.S.G. § 2B4.1(a).

(b) Because the payment at issue involved an amount over \$2,000, the offense level is increased by reference to the table in § 2F1.1. U.S.S.G. § 2B4.1(b)(1).

(c) The parties agree that, because Mr. Herzberg is pleading guilty to this offense before indictment and has truthfully acknowledged the conduct comprising the offense of conviction and additional relevant conduct, a downward adjustment of 2 levels is appropriate. U.S.S.G. § 3E1.1.

(d) Mr. Herzberg has no prior criminal record, and his criminal history is Category I.

(e) Mr. Herzberg has agreed to cooperate with the United States in this matter. In advance of the date of sentencing, if the government, in its sole discretion, determines that Mr. Herzberg has provided substantial assistance in the investigation or prosecution of one or more other persons who have committed offenses, pursuant to 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1, the government will file a motion so advising the sentencing Court and will ask that the Court impose, in its sole discretion, a sentence lower than the applicable minimum guideline sentence.

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

(a) Pursuant to § 2B4.1(b)(1), the offense level is increased by reference to the table in § 2F1.1, based upon "the greater of the value of the bribe or the improper benefit to be conferred." According to the United States, the increase should be 7 levels, based on Vitusa's receipt of \$163,905.12 from the Dominican Government in return for the payment of the service fee to the senior Dominican official. U.S.S.G. § 2F1.1(b)(1)(H). According to the defendant, the \$163,000 was not an "improper benefit" conferred on Vitusa, but was rather the payment of a legitimate and lawful obligation by the Dominican Republic to Vitusa. Consequently, according to the defendants, the increase should be 3 levels, based upon the "value of the bribe," i.e., Vitusa's unlawful payment of \$20,000 as charged in the criminal information. U.S.S.G. § 2F1.1(b)(1)(D). Thus, according to the United States, Mr. Herzberg's adjusted offense level is 13.

HERZBERG STIPULATED FACTS and SENTENCING CALCULATIONS

According to the defendants, Mr. Herzberg's adjusted offense level is 9.

(b) Under the government's analysis, the guidelines sentencing range is 12-18 months' imprisonment and a fine of \$3,000 to \$30,000. Under Mr. Herzberg's analysis, the guidelines sentencing range is 4-10 months' imprisonment and a fine of \$1,000 to \$10,000.

(c) Mr. Herzberg owns 100% of the stock in Vitusa. It is the defendant's position, therefore, that the amount of the fine imposed upon Vitusa should be reduced by the full amount of the fine imposed upon Mr. Herzberg, pursuant to U.S.S.G. § 8C3.4. It is the position of the United States, however, that U.S.S.G. § 8C3.4 is superseded by 15 U.S.C. § 78dd-2(g)(3) which provides that any fine imposed upon an officer, director or shareholder of a domestic concern may not be paid, directly or indirectly, or reimbursed in any manner by the domestic concern, in this case, Vitusa Corporation. See 15 U.S.C. § 78dd-2(g)(3).