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Indirect Ownership -
Bank accounts -

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AVON PRODUCTS, INC.

Claim No. CU-0772

Decision No. CU -15

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Paul L. Peyton, Esq.
and
Joseph Tumulty, Esq.

AMENDED PROPOSED DECISION

This claim against the Government of Cuba was denied by Proposed Decision of the Commission issued on October 26, 1966. Counsel for claimant thereafter submitted briefs and additional evidence. The matter having been fully considered, it is

ORDERED that the Proposed Decision be amended as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by AVON PRODUCTS, INC., for \$1,865,232.25, based upon the loss of a debt owed to it by Cosmetics Avon, S.A., of Cuba; unreimbursed expenses paid by it for the account of Cosmetics Avon, S.A.; a debt owed to Avon Cosmetics, S.A., of the Republic of Panama, (claimant's wholly owned subsidiary) by Cosmetics Avon, S.A., (wholly owned subsidiary of Avon Cosmetics, S.A.), the net worth of Cosmetics Avon, S.A.; and bank accounts in Cuba of Avon Cosmetics, S.A.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law,

the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

(a) . . . losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States, . . .

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 505(c) of the Act provides:

A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

Section 502(1) of the Act defines the term "national of the United States" as . . . (B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity . . .

An officer of the claimant corporation has certified that AVON PRODUCTS, INC., is a New York corporation and that at all times between

January 27, 1916 and June 24, 1966, more than 50 per cent of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

An officer of AVON PRODUCTS, INC., has further certified that at least 99 per cent of its stockholders of record, holding not less than 99 per cent of the authorized and outstanding capital stock of AVON PRODUCTS, INC., have had and/or have registered addresses located in the United States of America, that at no time has the number of stockholders with registered addresses outside the United States of America, or the number of shares of such stock held by them, exceeded one per cent of the total number of stockholders or one per cent of the total number of shares of such stock issued and outstanding, and that based on information of record, that a great majority of the stockholders of AVON PRODUCTS, INC., were and are citizens of the United States of America.

The evidence of record shows, and the Commission finds, that Cosmetics Avon, S.A., of Cuba was a wholly owned subsidiary of Avon Cosmetics, S.A., of the Republic of Panama, and that Avon Cosmetics, S.A., is a wholly owned subsidiary of claimant. Cosmetics Avon, S.A., (Cuban) was engaged in the manufacture and sale, in Cuba, of cosmetics and toiletries. Accordingly, the Commission concludes that AVON PRODUCTS, INC., was the indirect owner of Cosmetics Avon, S.A., (Cuba) and qualifies as a proper party claimant in accordance with the provisions of Section 505(c) of the Act referred to hereinabove.

Cosmetics Avon, S.A., was intervened by the Government of Cuba by Resolution 537, of March 27, 1961, pursuant to Cuban Law 647 (Official Gazette, November 25, 1959). Thereafter, Cosmetics Avon, S.A., was nationalized by Resolution of the Central Planning Board, published in the Cuban Official Gazette on June 29, 1961.

Based on the foregoing, the Commission finds that claimant suffered a loss within the meaning of Title V of the Act on March 27, 1961, when Cosméticos Avon, S.A., was intervened by the Government of Cuba. (See In the Matter of the Claim of Parke, Davis & Company, FCSC Claim No. CU-0180.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Claimant has stated its loss in the amount of \$1,865,232.25, itemized as follows:

Account Payable by Avon-Cuba to Avon-New York	\$1,327,214.62
Account Payable by Avon-Cuba to Avon-Panama	109,062.00
Unreimbursed expenses paid by Avon-New York for the account of Avon-Cuba	1,575.35
Net Worth of Avon-Cuba (not including \$5,751.69 of receivables due to Avon-Cuba from employees and affiliates)	422,890.11
Bank accounts in Cuba of Avon-Panama	<u>4,490.17</u>
	\$1,865,232.25

Among the documentation submitted are a balance sheet of Avon-Cuba for December 31, 1960; an affidavit of the Assistant Accounting Manager of Avon-Cuba, setting out the situation of Avon-Cuba as of June 29, 1961, with supporting data, including Minutes of a Meeting with Cuban government officials on March 22, 1961; an affidavit of the Accounting Manager of Avon-Cuba, setting out the situation of the Cuban Company

on February 28, 1961, prepared from the books of Avon-Cuba, with supporting documents and explaining the notes of March 22, 1961.

The situation of Avon-Cuba as of February 28, 1961, the nearest date to its intervention by the Government of Cuba, was as follows:

<u>Assets</u>	
Cash on hand and in banks	\$ 242,861.24
Deposits for foreign exchange (payable to claimant)	150,519.37
Accounts Receivable (less allowance for doubtful accounts)	309,641.94
Receivables due from employees	2,227.64
Receivables due from affiliates	3,524.05
Inventories (less obsolescence)	465,529.57
Fixed Assets: Buildings, machinery and equipment, furniture and fixtures, automotive equipment (less depreciation and amortization)	774,147.50
Prepaid and deferred charges	49,715.63
Investment	500.00
	<u>\$1,998,666.94</u>

<u>Liabilities</u>	
Capital	\$ 25,000.00
Earnings retained	403,641.80
Trade Account due to Avon-New York	\$1,327,214.62
Loan payable to Avon- Panama, with interest	109,062.00
Expenses paid by Avon- New York for Avon-Cuba	1,575.35
Other liabilities	<u>132,173.17</u>
	<u>1,570,025.14</u>
	\$1,998,666.94

Thus it will be seen that the net worth of Avon-Cuba, the excess of the assets over the liabilities, was \$428,641.80. The claimant chooses to deduct from its claim on this item, \$5,751.69 representing receivables due from employees and affiliates, leaving the amount of \$422,890.11 claimed as net worth.

From the foregoing, the Commission finds that claimant sustained a loss on account of its direct ownership of the debt owed to it by Cosmetics Avon, S.A., and an additional loss on account of its 100% indirect ownership interest in Cosmetics Avon, S.A., through its wholly owned Panamanian subsidiary.

Accordingly, the Commission concludes that as a result of the intervention of Cosmetics Avon, S.A., by the Government of Cuba on March 27, 1961, claimant suffered a direct loss of debts owed to it in the amounts of \$1,327,214.62 and \$1,575.35 within the meaning of

Title V of the Act. (See In the Matter of the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249). The Commission further concludes that by the aforementioned action of the Government of Cuba the claimant also suffered losses in the amounts of \$422,890.11 and \$109,062.00 representing its indirectly owned interest in a corporation intervened by the Government of Cuba, and in its debt owed to claimant's wholly owned Panamanian subsidiary.

There remain for consideration the bank accounts maintained in Cuba by Avon Cosmetics, S.A., of Panama. The record shows and the Commission finds that Avon Cosmetics, S.A., of Panama, maintained accounts in The First National City Bank of New York (Rancho Boyeros branch) which had balances of 4,384.05 pesos and 106.12 pesos (totaling 4,490.17 pesos on April 29, 1961.

A number of laws and resolutions were issued in Cuba affecting banks, bank accounts and currency. Not all of these things affect the accounts of claimant's Panamanian subsidiary.

Law 568, published in the Cuban Official Gazette on September 29, 1959, forbade the transfer of funds abroad, and effectively operated to block the funds of anyone who left the country.

By Cuban Resolution 2, published in the Cuban Official Gazette on September 17, 1960 pursuant to Cuban Law 851, the Government of Cuba specifically took over the Chase Manhattan Bank of New York, the First National Bank of New York and the First National Bank of Boston. This action did not nullify the debts of the banks, which included deposit accounts.

Law 891, published in the Cuban Official Gazette on October 13, 1960, made banking a public function and took all other banks, specifically excepting the Royal Bank of Canada and the Bank of Nova Scotia. This action did not in itself nullify debts to depositors, though some accounts, as of companies, may have been taken by other

nationalization of such entities. It appears that the Royal Bank of Canada and the Bank of Nova Scotia were sold to the Cuban Government.

Law 930, published in the Cuban Official Gazette on February 23, 1961, gave the National Bank the power to effect centralization of liquid assets "temporarily" taken from the people. In effect this froze or continued the blocking of bank accounts.

By Law 963, published in the Cuban Official Gazette on August 4, 1961, a currency exchange was effected. Currency was turned in at centers provided and a new currency was provided. There was no change in value. However, each person was to receive 200 pesos in new currency, and all over that amount was placed in a special account in his name. This did not affect bank accounts already in existence. By Law 964, published in the Cuban Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, the balance up to 10,000 remained in his special account, and all over 10,000 passed to the State Treasury. There were some minor exceptions. However, Laws 963 and 964 do not affect the bank accounts of Avon Cosmetics, S.A., (claimed in Claim CU-0772) which did not arise from currency exchange.

Law 989, published in the Official Gazette on December 6, 1961, in its terms nationalized by confiscation all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. This included such bank accounts as had not been established and confiscated by Laws 963 and 964.

The Commission is informed that after intervention of Cosmetics Avon, S.A., the Panamanian corporation, Avon Cosmetics, S.A., did no business in Cuba, and that in fact these bank accounts were of long standing. In the absence of evidence to the contrary, the Commission finds that the two bank accounts totalling 4,490.17 pesos, in the name of Avon Cosmetics, S.A., were taken by the Government of Cuba on December 6,

1961. (See In the Matter of the Claim of Floyd W. Auld, FCSC Claim No. CU-0020.)

Further, the Commission finds that on December 6, 1961, these 4,490.17 pesos had a value of \$4,490.17 and that claimant suffered a loss in that amount, within the meaning of Section 505(c) of Title V of the Act.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the losses suffered by claimant shall be increased by interest thereon at the rate of 6% per annum on \$1,860,742.08 from March 27, 1961 and on \$4,490.17 from December 6, 1961 to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSSES

The Commission certifies that AVON PRODUCTS, INC., suffered a loss as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Eight Hundred Sixty-five Thousand Two Hundred Thirty-two Dollars and Twenty-five Cents

(\$1,865,232.25), with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Amended
Proposed Decision of the
Commission

15 FEB 1967

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON

JUL 14 1967

Edward D. Re

Edward D. Re, Chairman

Francis Maclean

Clerk of the Commission

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)