

EXCHANGE OF NOTES CONSTITUTING AN
AGREEMENT ON THE PROVISIONAL MEASURES FOR
THE MUTUAL EXEMPTION OF PENSION COVERAGE
BETWEEN THE GOVERNMENT OF THE REPUBLIC
OF KOREA AND THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA

(Korean Proposing Note)

Beijing, February 28, 2003

Excellency,

I have the honour to refer to the recent discussions between the representatives of our two Governments regarding issues related to mutual exemption of pension coverage between the Republic of Korea and the People's Republic of China.

As a result of the above-mentioned discussions, I have further the honour to propose, on behalf of the Government of the Republic of Korea, that the Government of the Republic of Korea and the Government of the People's Republic of China conclude an Agreement on the Provisional Measures for the Mutual Exemption of Pension Coverage(hereinafter referred to as the "Agreement") for this purpose as follows:

Article 1
General Objective

For the purpose of avoiding the double coverage of pension, the nationals referred to in Article 2 of one State shall be exempt from the application of the other State's legislation on compulsory pension coverage, provided that they shall be subject to the legislation of the first-mentioned State.

Article 2

Personal Scope

The nationals to be covered under Article 1 are as follows:

1. Employees who are normally employed in the territory of one State by an employer having a place of business in that territory and who are sent by that employer to a company or an organization, including an affiliated or subsidiary company or a branch office of the employer, to work for the same employer in the territory of the other State.

2. Self-employed persons who have permanent residence in one State but temporarily reside in the other State.

Article 3

Definition

For the purpose of this Agreement,

- a. "State" shall mean the Republic of Korea or the People's Republic of China.
- b. "National" shall mean a person that has the nationality of a State in accordance with its laws and regulations.
- c. "Legislation" shall mean:
 - (i) For the Republic of Korea: the National Pension Act and regulations thereto.
 - (ii) For the People's Republic of China: the laws, regulations and rules concerning the Basic Old-Age Pension.

Article 4

Exemption of Compulsory Coverage for Industrial Trainees

Subject to Article 7 of this Agreement, the issue of exemption of compulsory pension coverage for the nationals from one State who work as industrial trainees in the enterprises of the other State shall be settled through the Social Insurance Agreement negotiation between the two Governments.

Article 5

Retroactive Clause

Subject to Article 7 of this Agreement, the issue of the outstanding Basic Old-Age Pension contribution by Korean employees and self-employed persons who work in China during the period before this Agreement enters into force and the issue of refunding of National Pension contribution paid by Chinese employees and Chinese industrial trainees who work in the Republic of Korea to the relevant Korean agency shall be settled through the Social Insurance Agreement negotiation between the two Governments.

Article 6

Issue of Certificates and Administrative Assistance

1. Where the legislation of one State is applicable to its nationals, the agency of that State shall issue, upon request of the employer or self-employed person referred to in Article 2 of this Agreement, a certificate stating that the person is subject to the legislation. This certificate shall be a proof that the employee or self-employed person referred to in Article 2 is exempt from the compulsory pension coverage provided by the legislation of the other State.

2. The agency issuing the certificates referred to in paragraph 1 of this Article shall be:

(1) For the Republic of Korea: the National Pension Corporation.

(2) For the People's Republic of China: the Social Insurance Administration of the Ministry of Labour and Social Security.

3. The agency of a State which issues the certificates referred to in paragraph 1 of this Article shall furnish a copy of the certificates to the employee or self-employed person in question as well as the employer of the employee and the agency of the other State.

4. The agencies referred to in paragraph 2 of this Article shall communicate directly or through diplomatic channels to consult on matters related to this Agreement

Article 7

Conclusion of Social Insurance Agreement

The two Governments shall make their best efforts for an early conclusion of the Social Insurance Agreement between the two Governments.

Article 8

Other Provisions

1. This Agreement herein proposed shall enter into force thirty (30) days after the receipt of the last notification through which either Government has notified the other that its internal legal procedures for entry into force has been completed and continue in force until the Social Insurance Agreement between the two Governments enters into force, unless terminated by either Government at any time on thirty (30) days written notice through diplomatic channels.

2. Any dispute regarding the interpretation or implementation of this Agreement shall be settled through diplomatic consultations.

If a reply Note is issued by Your Excellency on behalf of the People's Republic of

China to confirm the acceptance of the foregoing Articles, I have the honour to propose that this Note, together with Your Excellency's Note in reply, constitute an Agreement on the Provisional Measures for the Mutual Exemption of Pension Coverage between the two Governments. This Agreement shall be provisionally applied from the date of Your Excellency's issuing of the Note in reply. The Notes in Korean and English from me, together with reply Note in Chinese and English from Your Excellency shall have equal validity. The English texts shall prevail in case of any divergence in interpretation.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Kim Ha-joong
Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea

His Excellency
Tang Jiaxuan
Minister
Ministry of Foreign Affairs of the People's Republic of China

(Chinese Reply Note)

Beijing, February 28, 2003

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

"..... (Korean Proposing Note)"

I have further the honour to confirm on behalf of the Government of the People's Republic of China that Your Excellency's Note and this Note shall be regarded as constituting an Agreement on the Provisional Measures for the Mutual Exemption of Pension Coverage between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Tang Jiaxuan
Minister
Ministry of Foreign Affairs
of the People's Republic of China

His Excellency
Kim Ha-joong
Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea