

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY
FOR THE PROMOTION AND PROTECTION OF INVESTMENTS,
DONE AT CANBERRA ON 16 JUNE 2005**

[2005] ATNIF 9

Documents tabled on 29 November 2005:

National Interest Analysis [2005] ATNIA 23

with an attachment on Consultations

Text of the proposed treaty action

Background Information

Country political brief and Country fact sheet

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List of treaties of the same type with other countries

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Agreement between the Government of Australia and the Government of the Republic of Turkey for the Promotion and Protection of Investments, done at Canberra on 16 June 2005
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Nature and timing of proposed treaty action

1. It is proposed that Australia bring into force, by an exchange of notes, the Agreement between the Government of Australia and the Government of the Republic of Turkey for the Promotion and Protection of Investments (the "Agreement").
2. The Agreement was signed on 16 June 2005.
3. In accordance with Article 14(1), the Agreement will enter into force on the date on which both Parties have notified each other in writing that their internal legal requirements for the entry into force of the Agreement have been fulfilled. It is proposed that the exchange of notes take place as soon as both Parties have completed their internal legal requirements.

Overview and national interest summary

4. The Australian Government recognises the importance of promoting the flow of capital for economic activity and its role in expanding economic relations and technical cooperation between countries. The Agreement, by guaranteeing certain treatment for investments, will encourage and facilitate bilateral investment by citizens, permanent residents and companies of Australia and Turkey, in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence. The Agreement will put Australian investors in a better position to benefit from the investment opportunities in Turkey by providing them with a range of guarantees relating to non-commercial risk.
5. Turkey is experiencing very high rates of economic growth which should make it an increasingly attractive destination for Australian foreign investment. The Turkish Government is keen to increase foreign direct investment and a number of Australian companies, particularly in the mining sector, are looking at investing in Turkey over the next few years.

Reasons for Australia to take the proposed treaty action

6. The Agreement is intended to encourage and facilitate bilateral investment by citizens, permanent residents and companies registered in Australia and Turkey, consistent with the Australian Government's foreign investment policy. The Agreement does not limit either Government's ability to pass laws pertaining to pre-establishment investment or to regulate sensitive sectors.

7. The Agreement would be an important safeguard for Australian companies that wish to participate in major projects in Turkey. It would send a positive message to Australian business about investing in Turkey, by providing guarantees about expropriation/nationalisation, ensuring most favoured nation treatment for Australian investments and by establishing mechanisms for resolving disputes over investment matters. The investor-State dispute resolution procedures included in the Agreement provide an avenue by which Australian investors can seek redress for wrongs without recourse to the domestic legal system (for example, by recourse to the International Centre for the Settlement of Investment Disputes). No formal dispute resolution procedures have ever been invoked against Australia in relation to the nineteen investment protection and promotion agreements (IPPAs) currently in force for Australia.

8. Turkey is considered to have a relatively open and transparent investment regime. The prospect of strong economic growth is likely to lead to increased export and investment opportunities.

9. The level of two-way investment between Australia and Turkey is small. However, a number of Australian companies are currently pursuing investment opportunities, particularly in energy, infrastructure (eg port development and highways), and mining. In addition, a number of Australian companies have also won tenders for development projects in Turkey.

10. BHP-Billiton is a potential investor in the Izmir area of Turkey and has longer-term plans for involvement in the mining, processing and marketing of borates of which Turkey has 70 percent of the world's reserves. White Mining is interested in coal mining projects in Turkey. New laws on mining and foreign investment have made the mining sector in Turkey a more attractive market for Australian investment. Turkey encourages foreign investment in the energy sector.

11. The substantial Turkish community in Australia (around 100,000 people) has the potential to emerge as a significant source of investment funds for the Turkish economy. Australian investment in Turkey is likely to accelerate provided Turkey maintains a strong rate of growth.

Obligations

12. The Agreement closely follows the Australian model IPPA text, though there are some minor differences in paragraph numbering and wording.

13. The Agreement covers only the post-establishment treatment of investments; decisions to admit new investments (either through acquisitions or new businesses) remain the sole purview of the host government. The Agreement establishes a clear set

of obligations relating to the promotion and protection of investments in accordance with each Party's laws, regulations and investment policies. Article 3 requires each Party to promote and, where lawful and in accordance with applicable investment policies, admit investments by investors (including citizens and permanent residents) and companies of the other Party. Article 4 ensures that investments will receive most favoured nation treatment (i.e. investments of investors of a Party will be treated on a basis no less favourable than investments of investors from third countries) with exceptions to cover special treatment under free trade, taxation and other similar agreements.

14. Article 5 requires the Parties to allow investors and their employees to enter and remain in the territory of the other Party to engage in investment activities (subject to its laws and policies applicable from time to time), while Article 6 provides that Parties must make public and readily accessible those laws, regulations and policies which pertain to or affect investments.

15. Under Article 7, the Agreement prohibits the expropriation or nationalisation of investments unless it is for a public purpose, under due process of law, non-discriminatory and compensated promptly, adequately and effectively in the currency in which the investment was originally made or any other freely convertible currency. Article 8 provides that where an investor of one Party suffers loss by war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar event in the territory of the other Party, any claim for compensation, restitution, indemnification or other settlement by an investor of the first Party will be accorded treatment which is no less favourable than that for investors of any third country or investors of the other Party.

16. Article 9 requires Parties to permit all funds related to investments to be freely transferred, subject to certain exceptions. Transfers are to be permitted in a freely convertible currency.

17. Article 10 concerns the obligation of each Party to recognise the subrogation of an insurer which stems from the terms of the insurance agreement where the investor of one Party is insured against non-commercial risk. This Article limits the rights of the insurer to those that would have been exercisable by the investor and prevents the investor from pursuing rights and claims that have been taken over by an insurer.

18. The Parties are obliged to consult on matters concerning the, interpretation or application of the Agreement and endeavour to resolve any disputes connected with it by prompt consultations and negotiations (Articles 11 and 12(1)). Formal procedures for the settlement of disputes concerning investments between the Parties and between a Party and an investor of the other Party are established under Articles 12 and 13 respectively.

19. Article 4(3) requires investors to be provided with full access to competent judicial or administrative bodies regarding disputes with other investors and provides for the recognition and enforcement of any resulting judgements or awards.

Implementation

20. The Agreement will not require amendment to existing Australian legislation. It will be implemented within the framework of Australia's existing laws and policies relating to foreign investment.

Costs

21. Compliance with the Agreement has few foreseeable direct financial costs for Australia. Costs may be incurred in the event of a dispute between the Parties, should the dispute be submitted to an Arbitral Tribunal at the request of either Party pursuant to Article 12. Under these circumstances each Party bears the cost of the arbitrator it has appointed and of its representation in arbitral proceedings, while the cost of the Chairman and the remaining costs of arbitration are borne in equal parts by the Parties unless otherwise decided by the Tribunal as provided for in Article 12(13).

22. Australia and Turkey are parties to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Under Article 13(2)(a) of the Agreement, which deals with the settlement of disputes between a Party and an investor of another Party, a Turkish investor may refer a dispute relating to an investment in Australia to the International Centre for the Settlement of Investment Disputes (ICSID). In this case, the Australian Government may, pursuant to Article 61(2) of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, be required to bear all or part of the cost of arbitration and any relevant ICSID fees, subject to the discretion of the tribunal. The Government would also have to pay the cost of any award handed down in favour of the Turkish investor. To date, no case has been referred to the ICSID in relation to Australia's existing investment promotion and protection agreements.

23. Finally, pursuant to Article 8, Australia must, if it adopts any measures to pay compensation, indemnification or restitution for losses owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or similar events in its territory, treat Turkish investors no less favourably than Australian or third party investors. Article 7 provides that there shall be prompt, adequate and effective compensation in the event that an investment is expropriated or nationalised. This potential cost is highly unlikely to eventuate, given the Australian political and investment climate.

Regulation Impact Statement

24. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

25. Article 14(3) provides that the Agreement may be amended by written agreement between the Parties. Such amendments will enter into force when each Party has notified the other that it has completed all internal requirements for entry into force. These amendments would be subject to the domestic treaty process, including tabling and consideration by JSCOT.

Withdrawal or Denunciation

26. Article 14(1) provides that the Agreement will remain in force for a period of fifteen years after its entry into force and after that will remain in force until one of the Parties gives twelve months written notice of termination to the other Party. Any such decision to terminate would be subject to the domestic treaty process.

27. There are no provisions which deal with withdrawal or denunciation prior to the expiry of the initial fifteen year period. There is no implied right to terminate the Agreement before the fifteen period. Accordingly, pursuant to Article 54(b) of the Vienna Convention on the Law of Treaties, termination earlier than the fifteen years may take place only with the consent of both parties.

28. Article 14(4) provides that the Agreement will continue to be effective in respect of investments made or acquired before the date of termination for a further period of fifteen years after the date of termination.

Contact details

International Law and Transnational Crime Section
International Organisations and Legal Division
Department of Foreign Affairs and Trade

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Republic of Turkey for the Promotion and Protection of Investments,
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CONSULTATION

The Treaty was negotiated by the Department of Foreign Affairs and Trade, the Attorney-General's Department and Treasury. All relevant agencies have been consulted during negotiations and have given approval of the final text of the Treaty, including Treasury, the Department of Immigration, Migration and Indigenous Affairs and the Attorney-General's Department. There was extensive consultation within the Department of Foreign Affairs and Trade at each stage of the Treaty process.

The decade-long Treaty negotiations with Turkey were public knowledge. No comment from Industry has been received.

The State and Territory Governments were advised of the proposed Agreement with Turkey through the Commonwealth-States/Territories Standing Committee on Treaties. Since the negotiations commenced, information on the negotiations and signing has been provided to State and Territory representatives through the treaties schedule which is updated twice each year. The States and Territories have not sought further information or raised any points on this treaty.

Political Brief on Turkey

1. The Republic of Turkey has a unicameral parliament, the Turkish Grand National Assembly (TGNA), with 550 Deputies (Parliamentarians). Executive power is vested in the Head of State, the President, who is chosen by the TGNA for a term of seven years (President Ahmet Necdet Sezer since 16 May 2000). Legislative power is vested in the Head of Government and a Council of Ministers (Cabinet) which usually numbers around 35. The Deputies are elected on a first-past-the-post system for a five-year term. Political parties must achieve a national threshold of 10 per cent of the vote to gain representation in the TGNA. There is universal suffrage with a minimum voting age of 18.
2. An early general election, triggered by former Prime Minister Ecevit's ill health and rifts in his coalition government, was held on 3 November 2002 (elections were not due until April 2004). Mr Recep Tayyip Erdogan's moderate Islamist 'Justice and Development Party' (AKP), established in 2001, won a convincing victory over the mainstream parties. With almost 35 per cent of the vote, AKP won 363 of the 550 seats in parliament, a majority which allows AKP to govern in its own right. At around 80 per cent, voter turnout for the election was high.
3. The only other party in the election to exceed the 10 per cent threshold of votes required for parliamentary representation was Mr Deniz Baykal's 'Republican People's Party' (CHP). With around 20 per cent of the vote, CHP gained 178 seats.
4. Mr Erdogan had been barred from running in the election because of a 1998 conviction for 'Islamist sedition', and so had been unable to be named Prime Minister. Mr Abdullah Gul was named Prime Minister after the elections on 3 November 2002. Legislation was then passed allowing Mr Erdogan to run for parliament. A special rerun of the General Election in the province of Siirt on 9 March 2003 resulted in the election of Mr Erdogan to a seat in the Parliament, and he was appointed Prime Minister on 13 March 2003.
5. The AKP Government has said it will work within the framework of Turkey's secular constitution and will respect Turkey's traditional pro-Western stance (Turkey is a member of NATO). The AKP Government has also said it will accelerate efforts aimed at securing EU membership for Turkey, and work cooperatively with the IMF (which is providing Ankara with a USD 16 billion loan package to help stabilise the country's economy) and the World Bank. Turkey began formal accession negotiations with the European Union in October 2005.
6. Turkey continues to face a separatist problem in the majority Kurdish south-east of the country. The separatist Kurdish Workers' Party (PKK) called a truce to its 15 year insurgency when its leader, Abdullah Ocalan, was captured in February 1999. The Turkish Government eased restrictions on the public use of the Kurdish language in 2004 and an appeal court released a prominent Kurdish politician - Leyla Zana - from jail in June 2004. However, there has been a resurgence in PKK terror attacks, including on tourists, since the PKK called off a five-year long cease-fire in mid-2004.



TURKEY

Fact Sheet

General information:

Capital:	Ankara
Surface area:	775 thousand sq km
Official language:	Turkish
Population:	72.3 million (2004)
Exchange rate:	A\$1 = 1.0468 New Liras (May 2005)

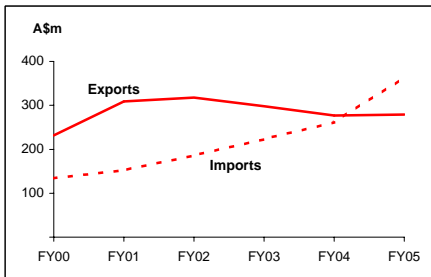
Fact sheets are updated biannually; May and September

Head of State:	H.E. President Mr Ahmet Necdet Sezer
Head of Government:	H.E. Prime Minister Mr Recep Tayyip Erdogan

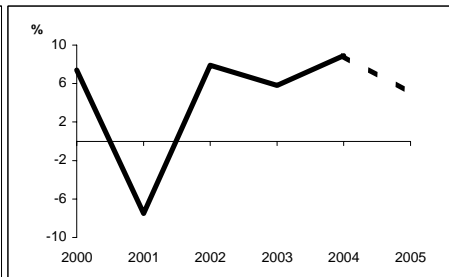
Recent economic indicators:

	2000	2001	2002	2003	2004(a)	2005(b)
GDP (US\$bn):	199.3	145.6	184.2	239.7	302.0	344.2
GDP per capita (US\$):	2,918	2,100	2,620	3,361	4,175	4,696
Real GDP growth (% change YOY):	7.4	-7.5	7.9	5.8	8.9	5.0
Current account balance (US\$m):	-9,819	3,390	-1,521	-7,905	-15,451	-17,008
Current account balance (% GDP):	-4.9	2.3	-0.8	-3.3	-5.1	-4.9
Goods & services exports (% GDP):	24.0	33.7	29.2	27.4	28.9	29.7
Inflation (% change YOY):	54.9	54.4	45.0	25.3	8.6	8.4
Unemployment rate (%):	6.6	8.5	10.3	10.5	10.3	10.0

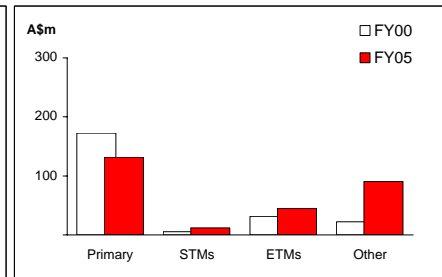
Australia's merchandise trade with Turkey



Real GDP growth



Australia's merchandise exports to Turkey



Australia's trade relationship with Turkey:

Major Australian exports, 2004-05 (A\$m):

Non-monetary gold	86
Coal	73
Wool	22
Iron ore	18
Medicaments (incl. veterinary)	10

Major Australian imports, 2004-05 (A\$m):

Motor vehicles for transporting goods	58
Fruit and nuts, fresh or dried	36
Rubber tyres	24
Televisions	17
Public transport motor vehicles	15

Australian merchandise trade with Turkey, 2004-05:

		Total share:	Rank:	Growth (yoy):
Exports to Turkey (A\$m):	279	0.2%	37th	0.8%
Imports from Turkey (A\$m):	365	0.2%	37th	39.4%
Total trade (exports + imports) (A\$m):	644	0.2%	38th	19.5%
Merchandise trade deficit with Turkey (A\$m):	85			

Australia's trade in services with Turkey, 2004:

		Total share:
Exports of services to Turkey (A\$m):	n.a.	n.a.
Imports of services from Turkey (A\$m):	n.a.	n.a.
Services trade balance with Turkey (A\$m):	n.a.	

Turkey's global merchandise trade relationships:

Turkey's principal export destinations, 2004:

1	Germany	13.9%
2	United Kingdom	8.8%
3	United States	7.7%
4	Italy	7.4%
5	France	5.8%
43	Australia	0.4%

Turkey's principal import sources, 2004:

1	Germany	12.8%
2	Russian Federation	9.3%
3	Italy	7.0%
4	France	6.4%
5	United States	4.9%
45	Australia	0.3%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) all recent data subject to revision; (b) EIU forecast.

n.a. Data not available.

List of Investment Promotion and Protection treaties with other countries

In force

Argentina [1997] ATS 4

Chile [1999] ATS 37

China [1988] ATS 14

Czech Republic [1994] ATS 18

Egypt [2002] ATS 19

Hungary [1992] ATS 19

Hong Kong [1993] ATS 30

India [2000] ATS 14

Indonesia [1993] ATS 19

Laos [1995] ATS 9

Lithuania [2002] ATS 7

Pakistan [1998] ATS 23

Papua New Guinea [1991] ATS 38

Peru [1997] ATS 8

Philippines [1995] ATS 28

Poland [1997] ATS 4

Romania [1994] ATS 10

Uruguay [2003] ATS 10

Vietnam [1991] ATS 36

Signed but not in force

Mexico [2005] ATNIF 16

Sri Lanka [2002] ATNIF 29

Other treaties with Turkey

- Convention [between the United Kingdom and Turkey] regarding Legal Proceedings in Civil and Commercial Matters
[1935] ATS 5
- Agreement with the Government of the Republic of Turkey concerning the Residence and Employment of Turkish Citizens in Australia
[1967] ATS 22
- Agreement on Trade, Economic and Technical Cooperation with the Government of the Republic of Turkey
[1989] ATS 11
- Treaty on Extradition with the Republic of Turkey and Exchange of Notes to Amend Article 2.1 of the Treaty
[2003] ATS 24