



Australian Government

Department of Foreign Affairs and Trade

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Ms Gillian Gould
Secretary of the Joint Standing Committee on Treaties
Room R1-109
Parliament House
CANBERRA ACT 2600

Dear Ms Gould,

During the public hearing on 8 March 2005 by the Joint Standing Committee on Treaties on the termination of the Agreement between the Government of Australia and the Government of the Slovak Republic on Trade and Economic Cooperation, done in Canberra on 23 April 1999, witnesses from the Department of Foreign Affairs and Trade undertook to provide further information in response to questions asked by Senator Tsebin Tchen.

Senator Tchen asked whether Australia had bilateral treaties with any other countries that might be seeking accession to the EU, and whether Australia was negotiating any such treaties with these countries.

The Department is pleased to provide the following in response to those questions.

Bulgaria, Romania, Turkey and Croatia are currently candidate countries for accession to the EU.

Current Agreements

Australia has no applicable agreements already in force with **Bulgaria** or **Croatia**.

Australia has three applicable agreements with **Romania**.

1. Agreement with the Government of Romania on Trade and Economic Cooperation [1997] ATS 10

Under Article 12, this agreement can be terminated with 90 days written notice by either side as the provisional five year period since its entry into force in March 1997 has expired. However, under Article 13 the provisions of the agreement would continue to apply after

termination to unfulfilled obligations under contracts entered into during the period of validity of the agreement.

The following two treaties are still within their provisional periods and so may need joint agreement for their termination.

2. Agreement with Romania on the Reciprocal Promotion and Protection of Investments [1994] ATS 10

This Agreement entered into force on 22 April 1994. Article 11 specifies that the Agreement remains in force for fifteen years and after that time may be terminated by giving written notice of one year to the other party.

Article 11(3) provides that the terms of the agreement will continue to apply for a further 15 years to investments made or acquired before termination of the agreement.

3. Agreement between the Government of Australia and the Government of Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and Protocol [2001] ATS 4

This Agreement entered into force on 11 April 2001. Article 28 states that it may be terminated by either party after five years from the date of its entry into force through written notice given on or before 30 June in any calendar year.

Australia has an Agreement on Trade, Economic and Technical Cooperation with the Government of the **Republic of Turkey** [1989] ATS 11. However, Article XI allows either party to terminate the Agreement through written notice at least six months prior to expiry of a five year period. Otherwise the Agreement is automatically renewed after five years. The Agreement entered into force on 3 April 1989, so it will be renewed automatically in April this year for the third time.

What implications EU accession has for these agreements depends on the text of the treaty. It is important to note that treaties must be terminated according to their terms. If a country is required to terminate its bilateral trade agreements with third parties to join the European Union it does not mean that it can do this unilaterally if the treaty does not permit this, or that it is no longer bound by its obligations under the treaty that continue post-termination as the case may be. Trade agreements negotiated by Australia do not become meaningless due to EU accession as protections exist in the text of these agreements and could be invoked if necessary.

Imminent Agreements

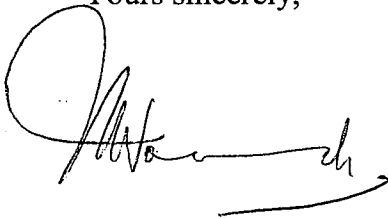
The Department is not aware of any imminent trade and economic agreements with **Bulgaria, Romania or Croatia.**

Australia is however, in the final stages of negotiating an Investment Promotion and Protection Agreement (IPPA) with **Turkey**. Given that these negotiations are near complete and that Turkish accession to the EU remains a long way off, the Government considers that

there are benefits in finalising the negotiation of this Treaty. It also appears that the Turks are very keen to conclude the Agreement.

It is important to note that there are protections built in to the text of the IPPA. For example, draft Article 14 provides that either Party may, by giving one year's written notice to the other Party, terminate the Agreement at the end of the initial fifteen year period or at any time thereafter. Termination before 15 years therefore requires consent of the other Party (Art. 54, Vienna Convention on the Law of Treaties). Article 14(4) goes on to provide that the terms of the Agreement will continue to apply for 15 years to investments made or acquired before termination of the Agreement. This will provide a degree of certainty for Australian investors.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John M L Woods', with a long horizontal stroke extending to the right.

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