

Agreement with the Republic of Turkey for the Promotion and Protection of Investments

Introduction

- 5.1 The *Agreement between the Government of Australia and the Government of the Republic of Turkey for the Promotion and Protection of Investments* (Canberra, 16 June 2005) (the Agreement) will, by guaranteeing certain treatment for investments, encourage and facilitate bilateral investment between Australia and Turkey.¹

Background

- 5.2 In 1999, the Australian Government made an in-principle decision to negotiate an investment promotion and protection agreement with Turkey. The first round of formal negotiations began in 2001, followed by another round of negotiations in 2002. Negotiations then continued informally to settle outstanding drafting issues. The final agreement text was decided upon in April 2005.²

1 National Interest Analysis (NIA), para. 4.

2 Michael Bliss, *Transcript of Evidence*, 5 December 2005, p. 26.

- 5.3 The majority of Australia's major trading partners and most OECD³ countries have International Promotion and Protection of Investments Agreements (IPPA) with Turkey. According to an International Monetary Fund⁴ assessment, Turkey is one of the highest returning markets⁵ on investments.

Overview

- 5.4 The Committee was informed that Turkey is considered to have a relatively open and transparent investment regime.⁶ While investment between Australia and Turkey is small,⁷ Turkey's current rate of economic growth is high, making it desirable for foreign investment. The prospect of a strong Turkish economy is likely to lead to increased export and investment opportunities for both countries.
- 5.5 In relation to Australian investment in Turkey, a representative of the Department of Foreign Affairs and Trade stated:

The value of investment is still small and there are no official figures available yet. Turkish treasury figures on foreign direct investment do not show Australia in the top 20 foreign investors. However, with growing interest from the Australian private sector and with the benefit of an investment promotion and protection agreement, we expect investment to increase.⁸

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- 3 The Organisation for Economic Cooperation and Development consists of 30 member countries with a commitment to democratic government and the market economy. Organisation for Economic Cooperation and Development, OECD, viewed 23 January 2006 <<http://www.oecd.org>>.
- 4 The International Monetary Fund consists of 184 member countries and was established to promote international monetary cooperation, exchange stability, and orderly exchange arrangements; to foster economic growth and high levels of employment; and provide temporary financial assistance to countries to help ease balance of payments adjustment. International Monetary Fund, viewed 23 January 2006, <<http://www.imf.org>>.
- 5 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.
- 6 NIA, para. 8.
- 7 Australian exports to Turkey in 2004-05 were A\$279 million with total trade in 2004-2005 at A\$644 million. NIA Turkey fact sheet.
- 8 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.

- 5.6 In light of Turkey's accession to the European Union and the modernisation of the Turkish economy, foreign direct investment in 2005-06 is expected to more than double from the previous year to reach US\$5 billion.⁹
- 5.7 In addition, in an effort to attract foreign investment, Turkey recently significantly reduced its corporate tax rate from 30 to 20 percent and partnered this with a reduction in its bureaucratic investment procedures.¹⁰
- 5.8 A number of Australian companies are currently looking at investing in Turkey over the next few years in the areas of energy, infrastructure, and mining.¹¹ Turkey's new laws on mining and foreign investment are expected to continue to encourage foreign investment in the energy sector.¹²
- 5.9 In addition, a number of Australian companies have also won tenders for development projects in Turkey. The Committee received evidence that this includes a major investment by an Australian company in Turkey's oil sector and other investments in the agriculture sector.¹³
- 5.10 In addition, the substantial Turkish community in Australia (around 100 000 people) has the potential to emerge as another significant source of investment funds for the Turkish economy.¹⁴

Obligations

- 5.11 The Agreement establishes a set of obligations relating to the promotion and protection of investments in accordance with each country's laws, regulations, and investment policies. Under the Agreement, each country retains the decision to admit new investments with no limit placed on either Government's ability to

9 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.

10 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 27.

11 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 (a salt or ester of Boric Acid) of which Turkey has 70 percent of the world's reserves. White Mining is interested in coal mining projects in Turkey. NIA, para. 10.

12 NIA, para. 11.

13 Richard Mathews, *Transcript of Evidence*, 5 December 2005, p. 28.

14 NIA, para. 11.

pass laws pertaining to pre-establishment investment or to regulate sensitive sectors.

- 5.12 Modelled on other Australian IPPA texts, the Agreement covers the post establishment treatment of investments.¹⁵

Consultation

- 5.13 The Committee received evidence that all relevant agencies were consulted during negotiations and approved of the final text of the Treaty. These agencies include Treasury, the Department of Immigration, Multicultural and Indigenous Affairs and the Attorney-General's Department. At each stage of the treaty process, extensive consultation was also undertaken within the Department of Foreign Affairs and Trade.¹⁶
- 5.14 No comment was received from Industry during the course of negotiations. State and Territory Governments were advised of the Agreement through the State/Territory Standing Committee on Treaties (SCOT). SCOT did not seek further information or raise any issues about the Agreement.¹⁷
- 5.15 The Committee received evidence that no formal consultation about the Agreement had taken place with Australia's Turkish community during the negotiating period.¹⁸
- 5.16 As stated at paragraph 5.10 the Committee received evidence that there is potential for Australia's Turkish community to emerge as a significant investor in the Turkish economy. In respect of this evidence, there appears to have been an oversight in not conducting formal consultation with the Australian-Turkish community.¹⁹

15 NIA, para. 13.

16 NIA, Consultation Annex.

17 NIA, Consultation Annex.

18 Department of Foreign Affairs and Trade, *Submission 5*, p. 1.

19 NIA, para. 11.

Dispute resolution

- 5.17 The Agreement would safeguard Australian companies participating in major projects in Turkey.²⁰
- 5.18 Redress for wrongs without recourse to the domestic legal system would be facilitated through the investor-state dispute resolution procedures included in the Agreement. No formal dispute resolution procedures have ever been invoked against Australia²¹ in relation to the 19 IPPAs currently in force for Australia.²²

Potential costs

- 5.19 Costs may be incurred in the event of a dispute between Parties if the dispute is submitted to an Arbitral Tribunal at the request of either Party. In addition, under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Australia may be required to bear the cost of arbitration if a dispute is referred to the International Centre for the Settlement of Investment Disputes.²³
- 5.20 Article 8 provides that 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.²⁴

Entry into force, implementation and withdrawal

- 5.21 The Agreement will enter into force once both Parties exchange notes indicating that domestic legal requirements have been met.²⁵
- 5.22 The Agreement will be implemented within Australia's existing laws and policies relating to foreign investment.²⁶

20 NIA, para. 7.

21 Michael Bliss, *Transcript of Evidence*, 5 December 2005, p. 28.

22 NIA, para. 7.

23 NIA, para. 21.

24 NIA, para. 23.

25 NIA, para. 3.

- 5.23 The Agreement will remain in force for 15 years after its entry into force and will remain in force until one of the Parties provides 12 months notice of termination to the other Party.²⁷ Article 14(4) stipulates that the Agreement will continue to be effective in respect to investments made or acquired before the date of termination for a further period of 15 years after the date of termination.²⁸

Conclusion and recommendation

- 5.24 The Committee agrees that the Turkish economy is a significant emerging market and has the potential to provide stable returns for investors.
- 5.25 However, from evidence taken by the Committee, it appears that the consultation process undertaken in relation to the Agreement was not adequate and should have included formal consultation with Australia's Turkish community.

Recommendation 4

The Committee supports the Agreement between the Government of Australia and the Government of the Republic of Turkey for the Promotion and Protection of Investments (Canberra, 16 June 2005) and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

26 NIA, para. 20.

27 NIA, para. 26.

28 NIA, para. 28.