

January 25, 1989

CFX-0021

UNDERSTANDINGS BETWEEN PROVINCES AND FOREIGN AUTHORITIES

In recent years, a number of provinces have signed understandings, memoranda of cooperation, ententes, contracts, etc., with foreign governments, subdivisions of federal states and international and intergovernmental organizations on subjects such as energy, culture, driving licenses, scholarships, and firefighting. The conclusion of such documents can strengthen ties of friendship and cooperation between Canada and other countries and in particular between provinces and foreign entities.

As in other instances, this office stands ready to assist in coordinating such provincial activities abroad using the resources of this department and our missions abroad. To this end, timely consultations are of the essence. Such consultation permits review by our legal bureau and other interested sectors of the department and contributes to avoiding embarrassment, confusion and delay. We would like to take this opportunity to emphasize also the importance of ensuring that any document signed by ministers or senior provincial officials be drafted in a form that avoids any confusion as to its legal character. Thus while provinces are encouraged to develop links abroad in as many areas of cooperation as possible, provinces cannot conclude instruments that could be perceived as creating legally binding obligations in public international law.

When your province wishes to negotiate such understandings, memoranda of cooperation, ententes, etc., with foreign governments, this department would therefore need to see such texts in draft prior to the outset of negotiations, for approval in principle and to comment on its content and form; and again at the conclusion of negotiations, prior to signature. The final text should be submitted to the local authorities under cover of a diplomatic note by our mission in the country.

With regard to understandings between provinces and USA states, the Department recognizes that the provinces and these states have long-standing and special relationships, expressed in numerous formal and informal understandings covering many subjects. Provinces should nevertheless keep in mind where USA states are concerned, that there are certain types of accords or sensitive areas with regard to which caution is required, given the federal government's overall responsibility for external relations. The Department would appreciate being informed of developments in this area, particularly as regards "senior level" accords and arrangements, in order that federal concerns can be appropriately taken into account.