

TRANSPORTATION

Aviation Preclearance

**Agreement Between the
UNITED STATES OF AMERICA
and the NETHERLANDS,
in Respect of ARUBA**

Signed at Washington December 2, 1994

With Annex

and

Amendment to Agreement
Signed at Washington May 22, 2008



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

**THE NETHERLANDS,
IN RESPECT OF ARUBA**

Transportation: Aviation Preclearance

*Agreement with annex
Signed at Washington December 2, 1994;
Entered into force March 4, 1996.
And amendment to agreement.
Signed at Washington May 22, 2008;
Entered into force January 7, 2009.*

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE
GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
IN RESPECT OF ARUBA
ON PRECLEARANCE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, in respect of Aruba, (hereinafter referred to as the Parties);

Considering that preclearance, the procedure of conducting in Aruba inspection by United States inspection agencies required for entry into the United States of passengers and crew destined nonstop to the United States in flight of aircraft, facilitates travel between the two countries; and

Considering that the laws of the two countries governing merchandise or articles the entry of which is prohibited are sufficiently similar to enable United States organizations to carry out their missions, subject to provisions of facilities adequate to enable them to use their resources efficiently and to ensure proper security safeguards for passengers, aircraft crew, baggage and aircraft stores entering the United States;

Agree as follows:

Article I

For the purpose of this Agreement, the implementing authorities shall be:

- (a) for the Government of the United States of America:
United States inspection agencies, i.e. the United States Customs Service (USCS), the Immigration and Naturalization Service (INS), the Animal and Plant Health Inspection Service (APHIS), and the Public Health Service (PHS);
- (b) for the Government of the Kingdom of the Netherlands:
the Minister of Transport and Communications of Aruba or any authority nominated by the said Minister.

Article II

Any flight by an authorized scheduled or charter air carrier destined non-stop from Aruba to the United States shall be eligible for preclearance.

Article III

In accordance with United States immigration, customs and public health laws and regulations, U.S. inspection agencies may

refuse passage onwards to the United States to any passenger or aircraft crew member on a flight subject to preclearance who refuses to comply with applicable laws and procedures. Except in circumstances arising under Article IV (g) of this agreement, no citizen of the United States or alien lawfully resident in the U.S. may be refused passage onwards to the United States.

Article IV

The Government of Aruba shall:

- (a) Permit United States inspection officials to carry out preclearance of passengers, crew, baggage, aircraft and aircraft stores on eligible flights and to determine procedures for carrying out inspections and utilization of their resources.
- (b) Provide and maintain the facilities as set forth in the Annex to this Agreement.
- (c) Permit the installation and operation of such communications and inspections aids and equipment as the United States inspection agencies require.
- (d) Enable United States inspection officials to search any and all persons, baggage, aircraft and aircraft stores subject to preclearance in accordance with this Agreement. Such search may be conducted for:

- (i) merchandise or other articles, including monetary instruments, falsely declared or not declared;
- (ii) merchandise or other articles the entry of which into the United States is prohibited or restricted, including controlled substances;
- (iii) documents relevant to an individual's immigration status which are fraudulent or misused.

(e) Permit U.S. inspection officials to search any person entering or with direct nexus to the inspection facility, and any article or conveyance operating in or with a direct nexus to the inspection facility.

(f) Authorize Aruban law enforcement officers, upon the request of a United States inspection agency, to:

- (i) seize and confiscate articles or merchandise, and/or arrest the bearer of such articles or merchandise (and any alleged accomplices), if such articles or merchandise are falsely declared or not declared at the time of preclearance and if possession or exportation of such articles or merchandise is prohibited under the laws of Aruba; or
- (ii) if possession or exportation of such articles or merchandise falsely declared or not declared is not prohibited under the laws of Aruba, permit U.S. inspectors to seize such articles or merchandise under United States law.

(g) Provide, upon request of a United States inspection agency, appropriate law enforcement assistance to prevent such person from boarding the aircraft when a passenger or aircraft crew member on a precleared flight is refused passage onwards because of refusal to answer questions of a United States inspection official relevant to his immigration status or refusal to cooperate or submit to search or is found or deemed by a United States inspection official to be inadmissible to the United States;

(h) Upon request of a United States inspection agency, provide appropriate medical assistance and, where necessary, access to medical isolation facilities for persons subject to preclearance who are suspected of having an infectious disease proscribed under United States public health laws and regulations.

Article V

The Government of the United States of America shall:

(a) Provide sufficient inspectors to carry out preclearance of passengers, crew, baggage, aircraft and aircraft stores on eligible flights to which preclearance has been extended in accordance with Article VIII of this Agreement with reasonable speed and efficiency.

(b) Have the United States inspection agencies consult regularly with the competent authority of Aruba, with the competent airport authority and with the air carriers concerned on matters relating to the implementation of this Agreement.

(c) Conduct preclearance in accordance with this Agreement, except that

(i) a United States inspection agency may defer its inspection onward to the United States as it deems necessary for any individual passenger, aircraft crew member or aircraft;

(ii) preclearance may be denied in the case of any flight where there is likely to be commingling of passengers or aircraft crew who have and who have not been precleared;

(iii) post-clearance on arrival in the United States may be required instead of preclearance in Aruba if United States inspection agencies, after notification to the Aruban authorities and the air carriers concerned, determine that adequate resources are not available or that additional passengers will overtax the facilities; and

(iv) post-clearance on arrival in the United States may be required in addition to preclearance in Aruba to the extent necessary to meet law enforcement concerns.

Where post-clearance is required under subparagraphs (iii) and (iv) of this paragraph, flights will be selected for such post-clearance on a reasonable and fair basis, taking into account convenience to passengers and just treatment of the air carriers concerned.

(d) Have the United States inspection agencies advise the appropriate Aruban authorities of the refusal and supply all data appropriate and relevant to that decision when a person is refused passage onward to the United States in accordance with Article III or when a search or seizure is made under Article IV.

Article VI

(a) United States citizen employees of the Government of the United States of America, assigned to preclearance duties in Aruba under this Agreement, shall not be amenable to the jurisdiction of the judicial or administrative authorities in Aruba in respect of any acts performed by them in the

exercise of their duties under this Agreement. Such employees and members of their families forming part of their households, except those who are permanent residents of Aruba, shall also be accorded such further privileges and immunities as are accorded to consular officers and members of their families under the Vienna Convention on Consular Relations.

(b) The Government of Aruba or the competent authority of Aruba shall take all appropriate steps to protect the facilities used by the preclearance officials for the purposes of carrying out preclearance against intrusion or damage and to protect the official archives and documents maintained at such facilities. Such official archives and documents shall enjoy the same inviolability as consular archives and documents under the Vienna Convention on Consular Relations.

Article VII

The United States may extend the application of any of its customs, immigration, agriculture and public health laws and regulations to aircraft, passengers, aircraft crew, baggage, cargo and aircraft stores in Aruba which are subject to preclearance, for the purpose of establishing and enforcing

penalties for violations of these laws and regulations upon arrival in the United States.

Article VIII

The Parties agree that any air carrier should have the option to use either preclearance or post-clearance subject to the following conditions:

(a) If an air carrier applies for preclearance, it shall use the procedure for all of its flights on a given route.

Ordinarily, three months' notice to the appropriate inspection agencies will be sufficient; however, the inspection agencies may require a reasonable period before extending preclearance to such air carrier in order to obtain personnel or facilities required by the anticipated changes in service.

(b) An air carrier desiring to withdraw entirely from preclearance must give twelve months notice to both Parties, but, if neither Party objects, it may withdraw sooner. An air carrier desiring to withdraw from preclearance only in respect to certain eligible flights must give three months notice, but, if neither Party objects, it may withdraw sooner.

(c) The United States inspection agencies may decline to conduct preclearance in respect of any air carrier until the carrier:

(i) has taken the necessary steps to enable it to deny carriage onwards to the United States to anyone found ineligible, in accordance with Article III, to travel on a precleared flight; and

(ii) has undertaken to be responsible for the removal of any such person to his point of embarkation or the country of which he is a national and to bear any costs (including where necessary accommodation and maintenance costs) arising therefrom.

Article IX

The cost of preclearance shall be borne as follows:

(a) The Government of the United States of America shall, pursuant to standard United States regulations governing preclearance/preinspection, be responsible for the personnel and operations costs of preclearance;

(b) In accordance with the provisions of Article VIII (c) (ii) of this Agreement, for any person refused passage onward by a United States federal inspection agency the air

carrier concerned shall be responsible for any costs, including, where necessary, accommodation and maintenance costs, arising from the removal to the person's point of embarkation, or to the country of which he is a national;

(c) The provision of the necessary preclearance facilities shall be the responsibility of the competent airport authority, but such costs may be recouped from the air carriers using preclearance;

(d) Any charges related to preclearance levied upon participating air carriers shall be assessed in a fair and reasonable manner.

Article X

Either Government may at any time request consultations concerning the interpretation, application or amendment of this Agreement, including the facilities annex and attachments. Such consultations shall begin within 60 days from the date the other Government receives the request.

Article XI

As far as the Kingdom of the Netherlands is concerned, this Agreement shall be applicable only to Aruba.

Article XII

The provisions of this Agreement shall be implemented in accordance with applicable laws of the United States and Aruba.

Article XIII

The terms of this Agreement shall be applied provisionally as from the thirtieth day after signature and shall enter into force on the date to be determined in an exchange of diplomatic notes, indicating that all necessary internal procedures for entry into force of the Agreement have been completed by both Parties. The Agreement shall continue in force unless it is terminated by either Party giving twelve months written notice thereof to the other Party. Such notice may, however, be withdrawn before the end of the twelve month period by agreement between the two Parties.

The Parties shall suspend operation of the Agreement on Preinspection between the United States and the Kingdom of the Netherlands in respect of Aruba, signed Oranjestad, Aruba, June 16, 1987, for the period when this present Agreement is in force or is being provisionally applied.

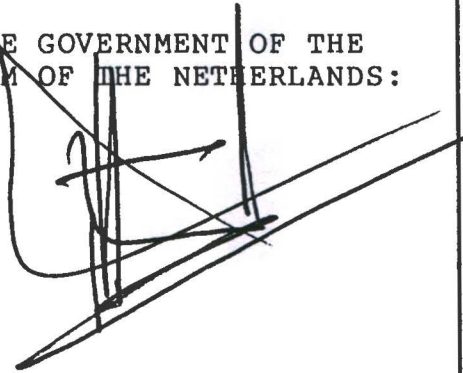
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE AT WASHINGTON, in duplicate, on this 2nd day of December, 1994.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

James R. Jant

FOR THE GOVERNMENT OF THE
KINGDOM OF THE NETHERLANDS:



FACILITIES ANNEX

The Minister of Transport and Communications of Aruba or his designee shall provide United States Federal Inspection Services (FIS) inspection facilities and inspectional configurations as published in the 1992 edition of "Guidelines for Federal Inspection Facilities at Airports" (Appendix A-SK #2-Preclearance FIS Facility). Preclearance inspectional services will commence upon the operationally acceptable completion of all facility modifications, as required by previously negotiated specifications and agreements.

Prior to commencement of preclearance operations, the Minister of Transport and Communications of Aruba or his designee shall:

- (a) Provide for such passenger comforts as a central climatic control device that includes air conditioning.
- (b) Provide suitable seating accommodations in the sterile hold room that will be conducive to passenger comforts.
- (c) Provide for adequate janitorial services in the preclearance area, as well as perform any necessary repairs or maintenance.
- (d) Provide hooded baggage conveyor systems that will insure adequate security as directed by the United States Secretary of the Treasury for the transport of the precleared baggage to a segregated baggage make-up area.

(e) Provide baggage make-up areas that will be secured with nine gauge chain link fence 8 feet high, topped with 3 strands of wire. The gates used to secure these enclosures shall be equipped with adequate locking mechanisms.

(f) Ensure that preclearance air passengers are not allowed to commingle with other arriving or departing passengers.

(g) Provide shower facilities with hot and cold running water, adequate office space for inspectors, storage space and adequate secure contiguous parking.

(h) During the hours of operations, ensure that a "Law Enforcement Officer is physically present in the preclearance facility.

**AGREEMENT AMENDING THE
AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THE
NETHERLANDS IN RESPECT OF ARUBA ON
PRECLEARANCE**

The Government of the United States of America and the Government of the Kingdom of the Netherlands in respect of Aruba (hereinafter "the Parties"),

Have agreed to amend the Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands in respect of Aruba on preclearance, done at Washington December 2, 1994 (hereinafter "the 1994 Agreement") as follows:

Article I

- A. The term "Preclearance Officer(s)" shall be inserted to replace the terms "United States inspection official(s)", "U.S. inspection official(s)", "U.S. inspector(s)", "preclearance officials" and "inspector(s)" throughout the 1994 Agreement.
- B. The term "Preclearance Area" shall be inserted to replace the terms "inspection facility" and "preclearance facility" throughout the 1994 Agreement.
- C. The term "Minister of Aruba in charge of Transportation" shall be inserted to replace "Minister of Transport and Communications of Aruba".
- D. In the Facilities Annex, the term "United States Secretary of Homeland Security" shall be inserted to replace the term "United States Secretary of the Treasury."

Article II

Article I of the 1994 Agreement shall be renumbered Article I bis and a new Article I shall be added that reads as follows:

"Article I

For the purposes of the Agreement:

- a) "Air Carrier" means a commercial enterprise that provides public transportation by aircraft for remuneration, hire or other consideration;
- b) "Aircraft Commander" means any person serving on a private aircraft who is in charge or has command of its operation and navigation;
- c) "Post-clearance" means the clearance of aircraft, crew, passengers, and goods in the territory of the United States of America;

- d) "Preclearance Area" means a part of an airport terminal and its grounds designated by Aruban authorities within which Preclearance Officers exercise specified powers and authorities. This area will be determined as set forth in the Facilities Annex to the Agreement. Any future changes to the Preclearance Area shall be agreed to by the implementing authorities.
- e) "Preclearance Officer" means an officer designated by the Government of the United States to carry out preclearance in the territory of Aruba;
- f) "Private Aircraft" means an aircraft engaged in a personal or business flight to the territory of the United States which is not carrying passengers and/or cargo for commercial purposes."

Article III

Paragraph (a) of Article I of the 1994 Agreement shall be deleted and replaced with the following:

"a) for the Government of the United States of America: U.S. Customs and Border Protection (CBP) and the U.S. Department of Health and Human Services (HHS) (collectively referred to as the "U.S. inspection agencies");"

Article IV

Article II of the 1994 Agreement shall be deleted and replaced by the following:

"Article II

a) Flights eligible for preclearance shall consist of any commercial flight (scheduled or charter, including ferry flights) of any size aircraft and any flight by private aircraft that is destined nonstop to the territory of the United States of America, so long as preclearance service has been requested and approved by U.S. inspection agencies for that flight. State aircraft will be considered by the U.S. inspection agencies on a case by case basis.

b) Cargo shall not be eligible for preclearance under this Agreement."

Article V

Article IV of the 1994 Agreement shall be amended as follows:

A. Paragraph (c) shall be deleted and replaced by the following:

"c) Permit the installation and operation of such communications and inspection aids and equipment as the U.S. inspection agencies determine they require, including radiological and nuclear detection devices. The implementing authorities shall establish mutually acceptable protocols for resolution in the event of a positive alarm during radiological/nuclear screening of aircraft, passengers, crew and/or their goods. The

Government of the United States will assist the implementing authorities of Aruba in establishing protocols to secure and dispose of any illicit and/or illicitly trafficked radiological/nuclear materials detected.”

B. Paragraph (f) shall be deleted and replaced by the following:

“f) Authorize the Aruban law enforcement officers, upon request of a United States inspection agency, to seize and confiscate articles or merchandise and/or arrest the bearer of such articles or merchandise (and any alleged accomplices), if such articles or merchandise are falsely declared or not declared at the time of preclearance and if possession or exportation of such articles or merchandise is prohibited under the laws of Aruba.”

C. Paragraphs (g) and (h) shall be re-designated as Paragraphs (h) and (i), and the new Paragraph (g) shall state the following:

“g) Permit Preclearance Officer(s) to seize and forfeit articles or merchandise of which the importation into the United States is a violation of U.S. law, including articles or merchandise falsely declared or not declared.”

Article VI

Article V of the 1994 Agreement shall be amended as follows:

A. Paragraph (c) (iii) shall be deleted and replaced by the following:

“iii) post-clearance on arrival in the United States may be required instead of preclearance in Aruba if U.S. inspection agencies, after notification to the Aruban authorities and the air carriers and/or aircraft commanders concerned, determine that adequate resources are not available or that additional passengers will overtax the facilities; and”

B. The final, unnumbered paragraph of Paragraph (c) shall be deleted and replaced by the following:

“Where post-clearance is required under subparagraphs (iii) and (iv) of this paragraph, flights will be selected for such post-clearance on a reasonable and fair basis, taking into account convenience to passengers and just treatment of the air carriers and/or aircraft commanders concerned.”

Article VII

Article VIII of the 1994 Agreement shall be amended as follows:

A. The chapeau shall be deleted and replaced by the following:

“The Parties agree that any air carrier or aircraft commander should have the option to use either preclearance or post-clearance subject to the following conditions:”

B. A new paragraph (d) shall be added as follows:

“d) With respect to private aircraft:

i) The U.S. inspection agencies may decline to conduct preclearance on a private aircraft until the aircraft commander has taken the necessary steps to deny carriage onwards to the United States to anyone found ineligible to travel on a precleared flight; and

ii) Aircraft commanders shall be required to comply with laws governing landing, entry and clearance in the United States. The Government of Aruba will endeavor to ensure that all aircraft commanders seeking preclearance provide advance notice of their departure from Aruba to the United States in accordance with procedures to be agreed upon between the implementing authorities in order to schedule preclearance services.”

Article VIII

Paragraphs (c) and (d) of Article IX of the 1994 Agreement shall be deleted and replaced by the following:

“c) The provision of the necessary preclearance facilities shall be the responsibility of the competent airport authority, but such costs may be recouped from the air carriers and aircraft commanders using preclearance;”

“d) Any charges related to preclearance levied upon participating air carriers and aircraft commanders shall be assessed in a fair and reasonable manner.”

Article IX

The Facilities Annex to the 1994 Agreement shall be amended as follows:

A. The extant paragraphs shall be designated as Paragraph (a) and Paragraph (c), respectively, and the subparagraphs of Paragraph (c) shall be numbered (i) through (viii).

B. Add the following new paragraphs at the end of the first paragraph:

“b) Regarding the Preclearance Area as defined in Article I (d) of the Agreement,

i) In the commercial environment, the Preclearance Area consists of the queuing area used exclusively for preclearance purposes clearly demarcated in front of the primary inspection area; U.S. inspection agencies' primary and secondary examination/inspection areas; the departure lounges for flights bound for the territory of the United States; connecting corridors, baggage make-up areas and tarmac areas designated for aircraft which will carry precleared passengers, crew and baggage; aircraft destined for the territory of the United States that are to be precleared; processing and/or waiting areas or areas containing kiosks or other equipment associated with U.S. expedited/trusted traveler membership programs (such as International Expedited Traveler (IET), NEXUS Air, US PASS), if applicable; and all designated conveyances for precleared passengers or crew used for the transportation of passengers or crew between sterile areas of terminals or from the terminal to the departing aircraft (e.g. buses).

ii) When travelers cannot board a departing aircraft by means of a connecting corridor or designated conveyance, the Preclearance Area shall also include a clearly demarcated area leading to that aircraft for the period of time during which boarding takes place.

iii) With respect to the preclearance of private aircraft, the area consists of: the private aircraft processing facility, to include primary and secondary examination areas and any passenger waiting lounge; tarmac areas designated for private aircraft which will carry precleared passengers, crew and baggage; and any private aircraft that is destined for the territory of the United States and is waiting to be precleared or has been precleared."

C. The re-designated subparagraph (viii) of Paragraph (c) shall be deleted and replaced by the following:

"viii) Ensure that, during the hours of operation of the U.S. inspection agencies, a continuous armed law enforcement presence exists in the Preclearance Area(s)."

D. Add the following paragraph at the end of the Annex:

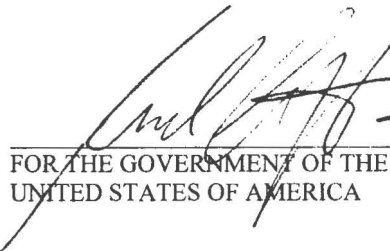
"d) Subject to availability of funds, the Government of the United States of America shall commence preclearance for private aircraft within a reasonable time after a suitable preclearance facility in accordance with CBP's Airport Technical Design Standards for that service is made available."

Article X


This Agreement shall be provisionally applied from the date of signature and shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties in which each Party informs the other that it has completed its necessary internal procedures for entry into force of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE in two originals at Washington, this twenty-second day of May, 2008.



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF THE
KINGDOM OF THE NETHERLANDS
IN RESPECT OF ARUBA