

50 (1994) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1994 Nr. 276

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden met betrekking tot
Aruba en de Verenigde Staten van Amerika inzake douane pre-
clearance, met bijlage;
Washington, 2 december 1994*

B. TEKST

**Agreement between the Government of the Kingdom of the
Netherlands in respect of Aruba and the Government of the
United States of America on preclearance**

The Government of the Kingdom of the Netherlands, in respect of Aruba, and the Government of the United States of America (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 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 refuses 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 the 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 Kingdom of the Netherlands:

(sd.) G. F. CROES

For the Government of the United States of America:

(sd.) JAMES R. TARRANT

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 mingle 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.

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, Alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

De voorlopige toepassing van het Verdrag (zie rubriek G hieronder) is in overeenstemming met artikel 15, vierde lid, van de Rijkswet goedkeuring en bekendmaking verdragen medegedeeld aan de Eerste en de Tweede Kamer der Staten-Generaal en aan de Staten van Aruba bij brieven van 9 december 1994.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel XIII in werking treden op de datum die zal worden bepaald in een diplomatieke notawisseling waarin tevens wordt aangegeven dat alle nationale procedures voor de inwerkingtreding van het Verdrag zijn voltooid.

Het Verdrag zal ingevolge artikel XIII voorlopig worden toegepast vanaf 1 januari 1995.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag ingevolge artikel XI alleen voor Aruba gelden.

J. GEGEVENS

Van het op 24 april 1963 te Wenen tot stand gekomen Verdrag inzake consulaire betrekkingen, naar welk Verdrag in artikel VI van het onderhavige Verdrag wordt verwezen, is de tekst geplaatst in *Trb.* 1965, 40 en de vertaling in het Nederlands in *Trb.* 1981, 143; zie ook, laatstelijk, *Trb.* 1994, 213.

Van de op 16 juni 1987 te Oranjestad tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden voor Aruba en de Vereenigde Staten van Amerika inzake voorinspectie, naar welke Overeenkomst wordt verwezen in artikel XIII van het onderhavige Verdrag, zijn tekst en vertaling geplaatst in *Trb.* 1987, 169; zie ook *Trb.* 1988, 30.

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het Verdrag in Aruba bekend zal zijn gemaakt op de dag na uitgifte van dit Tractatenblad.

Uitgegeven de *achtentwintigste* december 1994.

De Minister van Buitenlandse Zaken a.i.,

W. Kok