

50 (1994) Nr. 3

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2008 Nr. 128

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden met betrekking tot
Aruba en de Verenigde Staten van Amerika inzake
douanevoorinspectie;
(met Bijlage)
Washington, 2 december 1994*

B. TEKST

De tekst van het Verdrag, met Bijlage, is geplaatst in *Trb.* 1994, 276.

Op 22 mei 2008 is te Washington een Verdrag tot stand gekomen tot wijziging van het onderhavige Verdrag. De tekst van het wijzigingsverdrag luidt als volgt:

Agreement amending the 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 “the Parties”),

Have agreed to amend the 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, 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 mer-

chandise 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 pre-cleared 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) of the Annex 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 twentysecond day of May, 2008.

For the Government of the Kingdom of the Netherlands in respect of Aruba

NELSON O. ODUBER

For the Government of the United States of America

MICHAEL CHERTOFF

D. PARLEMENT

Zie *Trb.* 1996, 103.

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

F. VOORLOPIGE TOEPASSING

Zie rubriek G van *Trb.* 1994, 276.

Het wijzigingsverdrag wordt ingevolge zijn artikel 10 vanaf 22 mei 2008 voorlopig toegepast.

Wat het Koninkrijk der Nederlanden betreft, geldt de voorlopige toepassing alleen voor Aruba.

G. INWERKINGTREDING

Zie *Trb.* 1996, 103.

De bepalingen van het wijzigingsverdrag zullen ingevolge zijn artikel 10 in werking treden op de datum van de laatste nota van de diplomatieke notawisseling tussen de Partijen waarin beide Partijen elkaar informeren dat aan de vereiste interne procedures voor inwerkingtreding is voldaan.

J. VERWIJZINGEN

Zie *Trb.* 1994, 276 en *Trb.* 1996, 103.

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

Uitgegeven de zesentwintigste juni 2008.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN