

**No. 33375. Netherlands and
United States of America**

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. WASHINGTON, 2 DECEMBER 1994 [*United Nations, Treaty Series, vol. 1948, I-33375.*]

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. WASHINGTON, 22 MAY 2008

Entry into force: provisionally on 22 May 2008 by signature and definitively on 7 January 2009 by notification, in accordance with article X

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**N° 33375. Pays-Bas et États-Unis
d'Amérique**

ACCORD ENTRE LE GOUVERNEMENT DU ROYAUME DES PAYS-BAS À L'ÉGARD D'ARUBA ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE RELATIF À LA PRÉINSPECTION DES VOYAGEURS. WASHINGTON, 2 DÉCEMBRE 1994 [*Nations Unies, Recueil des Traités, vol. 1948, I-33375.*]

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[ENGLISH TEXT – TEXTE ANGLAIS]

**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:”