

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2016 Nr. 65

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van Aruba, en de Verenigde Staten van Amerika inzake de veiligheid van de burgerluchtvaart voor voorinspectie-operaties op de internationale luchthaven Koningin Beatrix op Aruba;
(met Bijlagen)
Washington, 7 april 2016*

B. TEKST

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba

Whereas an Agreement between the United States of America and the Kingdom of the Netherlands in respect of Aruba on preclearance for entry into the United States was concluded at Washington on December 2, 1994, and amended on May 22, 2008, hereafter referred to as "the 1994/2008 Agreement.

Whereas the United States of America and the Kingdom of the Netherlands, in respect of Aruba, (hereinafter "the Parties") have as a common objective the promotion and development of administrative and operational cooperation in civil aviation security, particularly in the area of Preclearance operations;

Whereas the Parties recognize the 1994/2008 Agreement as a separate and individual agreement, and desire to complement the 1994/2008 Agreement with cooperative activities in the field of civil aviation security relating to Preclearance operations;

Whereas the Parties affirm a common interest in permitting passengers who have pre-cleared U.S. customs, immigration, and other border controls at Queen Beatrix International Airport in Aruba (hereinafter "the Preclearance Airport"), to deplane into the Sterile Areas of airports within the territory of the United States;

Whereas the Parties recognize that entry into the Sterile Area at a U.S. airport is dependent on sustainable airport passenger checkpoint Screening standards implemented at the Preclearance Airport at a level commensurate with the Screening standards implemented at U.S. airports;

Whereas the Parties desire to increase the exchanges of information in areas pertinent to the identification of civil aviation security threats and the development of security standards pertaining to the Screening of passengers, property, and checked baggage, if appropriate, particularly with respect to Preclearance operations; and

Whereas the Parties desire to set forth a vehicle for the conduct of cooperative activities in the field of civil aviation security relating to Preclearance operations, consistent with the framework set forth in the Agreement and without prejudice to the 1994/2008 Agreement;

It is agreed as follows:

Article I

Definitions

Competent Authorities

Means, in the case of the United States, the Transportation Security Administration of the Department of Homeland Security of the United States of America ("DHS/TSA") and, in the case of Aruba, the Minister in charge of Transport ("MT") or the Department of Civil Aviation of Aruba ("DCA") as indicated in the specific articles (collectively, "the Competent Authorities"), or their respective successors.

Cleared Person

Means an individual and his or her accessible property that a U.S. Preclearance officer, after examination and inspection, has cleared for entry and admission into the United States and whose person and accessible property have been screened and cleared using Screening protocols that are mutually acceptable to the Parties as established pursuant to this Agreement.

Confidential Information

Means information provided by DCA and obtained or developed in the conduct of security activities, the disclosure of which DCA has determined would cause damage to the safety or other sensitive interests of Aruba or its stakeholders.

Passenger Screening Checkpoint

Means the location at the entry to a Sterile Area, at which individuals or accessible property are inspected for the presence of explosives, incendiaries, weapons, or other prohibited items. These locations include the Screening checkpoint or boarding gate where individuals and accessible property are inspected with metal detectors, x-ray machines, and other methods.

Preclearance

Means the procedure of conducting examination and inspection in the territory of one Party required for entry/admission into the territory of the other Party.

Screening

Means the aviation security inspection of individuals and property for weapons, explosives, incendiaries, and other prohibited items.

Selectee

Means a person selected for special Screening requirements by a computer-assisted passenger pre-screening system, or another process as mutually determined and approved by DHS/TSA and DCA.

Sensitive Security Information

Means information obtained or developed in the conduct of security activities, including research and development, the disclosure of which DHS/TSA has determined would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information obtained from any person, or be detrimental to the security of transportation.

Sterile Area

Means a portion of an airport that provides passengers access to boarding aircraft, and to which access is controlled by specified security measures, which include the Screening of persons and accessible property.

Article II

Objective

This Agreement sets forth the terms and conditions under which the Competent Authorities will engage in cooperative activities in the area of civil aviation security, and establish Screening standards for passengers departing the Preclearance Airport for the United States that are comparable to those implemented at U.S. airports. In addition, this Agreement sets forth the terms and conditions, as may be further specified in an Appendix hereto, whereby DHS/TSA may accept DCA's procedures for checked baggage Screening. Cooperative activities undertaken pursuant to this Agreement will provide for the development and implementation of mutually acceptable airport passenger checkpoint and checked baggage Screening standards, if applicable, at the Preclearance Airport to ensure that the screening of passengers, accessible property, and checked baggage Screening, if applicable, is performed using standards comparable to Screening standards implemented at the U.S. airports at which the Cleared Persons and checked baggage will arrive. Accordingly, these activities will ensure the security and facilitation of passengers and checked baggage arriving in the United States from the Preclearance Airport, particularly passengers transferring flights upon arrival in the United States, and align U.S. and Aruba's security measures while reducing unnecessary duplication or redundancies, to the extent appropriate and consistent with the respective laws and regulations of the Parties.

Article III

Implementation

- A. Annexes to this Agreement are legally binding and constitute an integral part of this Agreement.
- B. The duly authorized representatives of DHS/TSA and MT, in accordance with the terms and conditions of this Agreement, may develop and conclude project arrangements, to be documented as non-legally binding appendices to this Agreement ("Appendices"), delineating their cooperative activities. The Appendices shall contain a description of the type of cooperation to be performed, the personnel and other resources required to accomplish the tasks, the estimated costs, implementation plans, the type of equipment to be used or loaned (if any), and duration, as appropriate. Any activity conducted under an Appendix shall be consistent with and subject to the terms of this Agreement.
- C. The designated official within the DHS/TSA for the coordination and management of this Agreement is the Assistant Administrator of the Office of Global Strategies or his/her designee.
- D. For Aruba DCA is responsible for the coordination and management of this Agreement.

Article IV

Scope of work

- A. The cooperative activities in relation to civil aviation security for Preclearance operations between the Competent Authorities of the Parties may include, but are not necessarily limited to, the following:
 - 1. Providing general expertise to assist in developing and improving civil aviation security infrastructure, standards, procedures, policies, training and equipment;
 - 2. In accordance with Annex C, assisting in the development of formal training and performance testing related to civil aviation security for screener personnel at the Preclearance Airport;
 - 3. Developing and implementing comparable and mutually acceptable standards, and sharing best practices and procedures for passenger and accessible property Screening;
 - 4. Sharing information and experience related to operational processes in civil aviation security for Preclearance operations, including information related to Screening methods and the evaluation of new and advanced security equipment in an airport environment;
 - 5. In accordance with Annex D, loaning necessary equipment to achieve comparable screening standards for passenger and accessible property Screening;
 - 6. In accordance with Annex A, conducting joint operational assessments of the Parties' respective civil aviation security infrastructure, programs, procedures, and processes, for the Screening of passengers and accessible property in connection with the Preclearance operations; and
 - 7. Developing and carrying out joint initiatives aimed at enhancing international civil aviation security in connection with Preclearance operations.
- B. Relevant cooperative activities in civil aviation security for Preclearance operations and the development of security standards and procedures pertaining to the Screening and Preclearance of passengers shall be consistent with this Agreement.
- C. Any exchange of information or material that may involve Confidential Information or Sensitive Security Information, shall be done in accordance with applicable laws and policies, this Agreement and Annex B hereto.

Article V

Screening standards at the preclearance airport

- A. The Competent Authorities shall establish, and DCA shall ensure implementation of, passenger and accessible property Screening standards at the Preclearance Airport that are comparable to the Screening standards at commercial airports in the United States. Accordingly, such standards shall provide for, among other things, the establishment and maintenance of Sterile Areas in the Preclearance Airport in accordance with the following requirements:
 - 1. Ensuring that the Sterile Area is cleared of unauthorized persons, explosives, incendiaries, or weapons each time the area is put into operation following a period of non-control;
 - 2. Controlling against access by unauthorized persons and the unauthorized introduction of explosives, incendiaries, weapons, or other prohibited items;
 - 3. Screening any person upon entry into the Sterile Area, and rescreening any person, who for any reason exited from the Sterile Area to a public (non-sterile) area, upon reentry into the Sterile Area;

4. Establishing and implementing breach control procedures to ensure that any unauthorized person who is discovered in the Sterile Area, and his or her accessible property, are continuously monitored until removed from the Sterile Area, and that appropriate law enforcement authorities are immediately notified of the incident;
5. Establishing and implementing procedures to ensure that the Sterile Area has not been contaminated in the event of a breach where security and law enforcement personnel are not able to continuously monitor and respond to the unauthorized person or prohibited item in the Sterile Area. Mitigation measures shall include full or partial terminal evacuation, as appropriate, and notification of appropriate authorities; and
6. Establishing and implementing notification procedures and effective communications channels to ensure the adequacy of law enforcement officer ("LEO") response in the event of a breach of the Sterile Area.

B. The Competent Authorities shall establish and implement a mutually acceptable list of items that are prohibited from the Sterile Area. That list shall include, but is not limited to, guns and firearms, club-like items, explosives, incendiaries, disabling chemicals and other dangerous or sharp items that could be used to cause catastrophic damage to an aircraft or might be used by those with the intent to hijack an aircraft.

C. The screening standards developed by the Competent Authorities and the list of prohibited items, discussed in Article V.A and V.B above, may be amended or otherwise modified from time to time depending on current threat information or other circumstances as may be mutually agreed upon.

Article VI

Screeners standards at the preclearance airport

A. The Competent Authorities shall establish, and DCA shall ensure implementation of, standards for all persons performing Screening functions at the Preclearance Airport, which shall be comparable to the screener standards required in the United States. Accordingly, such standards shall ensure that screeners at the Preclearance Airport shall:

1. Meet minimum physical and educational standards;
2. Successfully undergo a background check that is comparable to those applied to screeners at airports in the United States;
3. Complete formal classroom training, on-the-job training, recurrent training, and where needed, remedial training that is comparable to the level of training provided to screeners at airports in the United States. Training shall, at a minimum, include instruction in proper Screening techniques, physical inspection, use of metal detectors, use of X-ray systems, and Threat Image Projection training or a comparable alternative;
4. Be subject to a program of performance testing through undisclosed evaluation of screeners' abilities to detect and process people and property prohibited from entering the Sterile Area in accordance with Aruban law; and
5. Be subject to a program of annual screener proficiency recertification using both written examinations and practical applications.

The standards may be further specified in an Appendix hereto.

B. DCA shall ensure implementation at the Preclearance Airport so as to maintain staffing levels and supervision sufficient to support the configuration of each Passenger Screening Checkpoint.

Article VII

Passenger screening methods at the preclearance airport

The Competent Authorities shall establish, and DCA shall ensure implementation of, mutually acceptable procedures to ensure that passengers and other persons at the Preclearance Airport are prevented from carrying prohibited items into the Sterile Area or onboard an aircraft, and that such mutually acceptable procedures shall be comparable to the passenger Screening procedures required in the United States, and, at a minimum, shall ensure the following:

- A. All persons desiring to pass beyond the Passenger Screening Checkpoint or board an airplane shall be screened for prohibited items.
- B. Any person who refuses to be screened shall be denied passage beyond the Passenger Screening Checkpoint.
- C. Prior to an individual being permitted to pass beyond the Passenger Screening Checkpoint, Screening shall:
 1. Normally be accomplished through the use of metal detectors. Where metal detectors are not available, a physical body search shall be conducted using procedures comparable to those employed in the United States;
 2. Satisfactorily resolve all indications of unaccounted for metal on an individual's person.

- D. Other equipment or methods for Screening individuals may be used, as mutually agreed to, by the Competent Authorities in writing.
- E. Any person who cannot be cleared by using any combination of applicable Screening procedures shall be referred to a LEO.
- F. DCA shall ensure implementation of specific mutually acceptable procedures for the use of walk-through metal detectors ("WTMD"), hand-held metal detectors ("HHMD"), a physical body search, and other Screening methods, including alarm resolution protocols.
- G. Specific mutually acceptable procedures to screen the following passengers shall be established, and DCA shall ensure their implementation: diplomats; individuals exempted from Screening; individuals with disabilities; infants, toddlers, and young children; animals; armed LEOs; individuals in the custody of armed LEOs; individuals under protective escort of armed LEOs; emergency personnel; armed security guards; and aircraft operator flight crews.
- H. Secondary Screening of persons identified by an airline as Selectees pursuant to DHS/TSA's Selectee List shall be conducted using mutually acceptable procedures.
- I. Random secondary Screening of a mutually acceptable specified percentage of persons who enter the Passenger Screening Checkpoint at the Preclearance Airport shall be conducted.
- J. When contraband or a security threat involving a passenger subject to Preclearance is detected at a Passenger Screening Checkpoint or otherwise during the passenger Screening process at the Preclearance Airport, U.S. Customs and Border Protection personnel, such as the Port Director or on-duty shift supervisor, will be immediately notified of the event.

Article VIII

Screening equipment at the preclearance airport

The Preclearance Airport shall use a combination of Screening equipment and methods that meet DHS/TSA qualification standards, to include X-ray systems, WTMDs, explosives trace detection (ETD) devices, and HHMDs. The Parties further agree that MT shall ensure that:

- A. Each X-ray system used for Screening at the Preclearance Airport passes Test Step Wedge, discerns organic and inorganic materials, and has color imaging capability;
- B. The operators of the ETD devices shall consult with DHS/TSA to determine the appropriate ETD settings; and
- C. The operators of the screening equipment shall provide for daily calibration of Screening equipment and periodic maintenance.

Article IX

Accessible property screening methods at the preclearance airport

The Competent Authorities shall establish, and DCA shall ensure implementation of, mutually acceptable procedures for accessible property Screening at the Preclearance Airport, which shall be comparable to the accessible property Screening procedures required in the United States. At a minimum, such procedures shall ensure the following:

- A. Mutually acceptable alarm resolution protocols shall be established, and DCA shall ensure implementation, to prevent passengers from carrying prohibited items in their accessible property into the Sterile Area, or onboard an aircraft, by Screening all carry-on items passing through the Passenger Screening Checkpoint, using one or more of the following Screening methods:
 - 1. X-ray Screening;
 - 2. ETD; and/or
 - 3. Physical inspection.
- B. Inspections of carry-on items at each X-ray unit in operation at each Passenger Screening Checkpoint shall be continuously conducted.
- C. If a person refuses to permit inspection of any carry-on item, that item shall not be allowed into the Sterile Area or inside any aircraft cabin departing the Preclearance Airport for the United States.
- D. When an image of a carry-on item displayed on an X-ray monitor indicates that the item may conceal an explosive, incendiary, or a deadly or dangerous weapon, the carry-on item shall be subjected to additional Screening. Additional Screening of the carry-on item, which must be accomplished in the presence of the passenger, shall use the following inspection methods in the order listed:
 - 1. ETD – where available, an ETD device must be used to inspect carry-on items that cannot be cleared by the X-ray operator; and
 - 2. Physical inspection – conduct a physical inspection of the carry-on item.
- E. Property that cannot be cleared by using any combination of the agreed upon procedures shall be referred to a LEO.

Article X

Joint operational assessment of the preclearance airport

- A. The Competent Authorities shall conduct joint operational assessments of the civil aviation security infrastructure, programs, procedures, and processes established and implemented at the Preclearance Airport for the purpose of ensuring compliance with the mutually agreed standards as related to passenger and accessible property Screening operations in accordance with this Agreement and related annex or appendix referred to in Article III.A.
- B. The Competent Authorities shall conduct periodic joint operational assessments of the Screening standards implemented at the Preclearance Airport to ensure that the standards and their implementation and performance are comparable to those implemented and performed at commercial airports in the United States.
- C. The Competent Authorities shall coordinate on development of a mutually acceptable schedule of such joint operational assessments of the Preclearance Airport. Each joint operational assessment shall be scheduled at least sixty (60) days in advance of conducting such assessment.

Article XI

Host party support

The support by DCA necessary for accomplishing the cooperative activities and exchanges contemplated by this Agreement shall be in accordance with applicable laws, regulations and policies of Aruba. DCA also may provide such additional support as may be set forth in an Appendix.

Article XII

Financial provisions

- A. Each Party shall bear all costs, including travel expenses, associated with the participation of its own personnel in work performed under this Agreement.
- B. All activities pursuant to this Agreement are subject to the availability of appropriated funds and personnel.
- C. Notwithstanding Article XII.A, the Parties may, by mutual agreement, provide for an exchange of funds through an Appendix or other mutually acceptable arrangement.

Article XIII

Confidentiality

- A. Cooperative activities undertaken pursuant to this Agreement may include the use and exchange of Confidential Information and/or Sensitive Security Information, to the extent authorized by applicable laws, regulations and policies of the Parties.
- B. The release of Confidential Information by DCA to DHS/TSA is subject to the prior approval of its Director.
- C. The release of Sensitive Security Information by DHS/TSA to DCA is subject to the prior approval of the TSA Administrator and to the handling, distribution and storage requirements contained in Annex B hereto.
- D. Unless otherwise required by law or regulation, the Competent Authority of neither Party shall disclose to any person (including, but not limited to, a contractor of a Party) other than its employees any information, documents, records, or other materials received from the other Party in connection with work performed under this Agreement or its Annexes and Appendices, without the express written consent of the other Party.
- E. The Competent Authority of each Party shall take all practicable steps to ensure that information provided or generated pursuant to this Agreement is protected from further disclosure. In furtherance of that objective, the Competent Authority of each Party shall take steps, to the extent consistent with its domestic laws or regulations, to ensure that:
1. It does not use Confidential Information and/or Sensitive Security Information for purposes other than those provided for in the Annexes or Appendices to this Agreement;
 2. It complies with any distribution and access restrictions on information that is provided pursuant to the Annexes or Appendices to this Agreement;

3. It investigates all cases in which it is known or where there are grounds for suspecting that Confidential Information or Sensitive Security Information or material provided or generated pursuant to the Annexes or Appendices to this Agreement has been lost or disclosed to persons not authorized to receive such information under the terms of this Agreement, and promptly and fully informs the competent authority of the other Party of the details of any such occurrences, and the final results of the investigation and of the corrective action taken to preclude recurrences.

F. The Competent Authority of each Party shall ensure that access to Confidential Information and/or Sensitive Security Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information as specified in an Annex or Appendix to this Agreement.

Article XIV

Indemnities and liability

A. Without prejudice to paragraphs B and C of this Article, the United States, including the DHS/TSA and all other agencies and instrumentalities of the United States (collectively "the United States"), assumes no liability for any claim, loss, damage, injury, or death arising out of or relating to this Agreement, its Annexes and Appendices.

B. The Competent Authorities of Aruba, agree to indemnify the United States and any current or former officer or employee of the United States for any judgments, settlements, or awards paid by them and all costs (including attorneys' fees) incurred by them as a result of any claim or legal proceeding of any kind brought by a third party in Aruba, arising out of or relating to this Agreement. Any disagreements between the Parties shall be resolved in accordance with the provisions of Article XVII.

C. Acts by the United States or any current or former officer or employee of the United States arising out of or relating to this Agreement or its Annexes and Appendices that have been determined, through judicial procedures or in a settlement, to (i) constitute intentional misconduct and gross negligence, and (ii) have resulted in personal injury, death, or property damage, shall not be considered within the scope of the obligation of the Competent Authorities of Aruba, to indemnify the United States or any current or former officer or employee of the United States under paragraph B of this Article.

Article XV

Consultations

Either Party may at any time request consultations concerning the interpretation, application or amendment of this Agreement, including its Annexes or Appendices. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request, unless otherwise mutually agreed.

Article XVI

Amendments

A. Any amendment to this Agreement or its Annexes shall be mutually agreed upon through diplomatic channels by the Parties and shall come into force in accordance with the procedure laid down in Article XVIII.

B. DHS/TSA and MT may agree in writing to amend any Appendix without an exchange of diplomatic notes.

Article XVII

Resolution of disagreements

Any disagreement regarding the interpretation or application of this Agreement, including any Annex or Appendix, shall be resolved by consultations between the Parties, in accordance with Article XV of this Agreement, and shall not be referred to any court, international tribunal or third party for settlement.

Article XVIII

Entry into force and termination

A. This Agreement shall enter into force thirty days from the date of the later note in an exchange of diplomatic notes by the Parties in which each Party informs the other that it has completed its necessary internal procedures for entry into force of this Agreement.

B. This Agreement may be terminated at any time by either Party by providing sixty (60) days' notice in writing to the other Party. Termination of this Agreement shall not affect obligations of the Parties under Article XIII and XVII of this Agreement. Each Party shall have one hundred twenty (120) days to close out covered activities following termination of this Agreement. Termination of this Agreement shall also terminate all Annexes and/or Appendices concluded by the Parties pursuant to this Agreement. Termination of any Annex or Appendix affects only those activities covered by the terminated Annex or Appendix.

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

DONE at Washington, DC, this 7th day of April, 2016, in duplicate, in the English language.

FOR THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF ARUBA

MR. OTMAR E. ODUBER
Minister of Tourism, Transportation, Primary Sector and Culture

FOR THE UNITED STATES OF AMERICA

MR. PETER V. NEFFENGER
Administrator Transportation Security Administration

Annex A

To the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba

REGARDING CIVIL AVIATION SECURITY OPERATIONAL ASSESSMENTS

I. Purpose

This Annex A to the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba, concluded on April 7, 2016 (hereinafter "the Agreement"), sets forth the guidelines under which the Department of Homeland Security, Transportation Security Administration (DHS/TSA) and the Department of Civil Aviation of Aruba (DCA) shall assist each other in efforts to enhance civil aviation security by exchanging information regarding security threats to civil aviation, and by periodically evaluating the civil aviation security preclearance operations at Queen Beatrix International Airport in Aruba (hereinafter "the Preclearance Airport"), in accordance with Articles IV.A.6 and X of the Agreement. Capitalized terms used but not defined in this Annex A shall have the respective meanings given to them in the Agreement.

II. Scope

A. General

1. DCA shall permit DHS/TSA to jointly evaluate passenger and accessible property Screening operations at the Preclearance Airport to measure and report on the implementation of the mutually acceptable aviation security measures and procedures at the Preclearance Airport and to determine comparability with U.S. screener standards for passenger and accessible/hold baggage screening methods.
2. TSA will evaluate the Preclearance operations at the Preclearance Airport in four phases, as follows:
 - Phase 1: Baseline Evaluation
DHS/TSA will conduct a Baseline Evaluation to determine current comparability to DHS/TSA standards at the Preclearance Airport. If no gaps are found, the date of completion of the Baseline Evaluation will serve as the Preclearance annual review date for the location; thereby making Phase 2 and Phase 3 unnecessary.
 - Phase 2: Remediation
DHS/TSA will recommend DCA remediation to bring gaps identified in the Baseline Evaluation or Annual Review into comparability with DHS/TSA measures.
 - Phase 3: Re-Evaluation
DHS/TSA conducts a Re-Evaluation visit to determine the disposition of previously identified gaps.
 - Phase 4: Annual Review
DHS/TSA conducts an onsite Annual Review to validate continued comparability to DHS/TSA measures.

3. DCA shall permit, upon request, DHS/TSA's immediate escorted access to the airport facilities and air carrier stations at the Preclearance Airport, in the event of an emergency situation concerning a specific threat to civil aviation security.

B. Operational Assessments of the Preclearance Airport

1. DHS/TSA will perform scheduled Preclearance Airport operational assessments at the Preclearance Airport to determine comparability with U.S. standards, in accordance with Articles V, VI, VII, VIII, and IX of the Agreement.
2. The DHS/TSA operational assessments are to include a comprehensive review of all documents and related material regarding the implementation of aviation security measures for Preclearance operations at the Preclearance Airport, including but not limited to: national civil aviation security program, implementing regulations and written operating procedures, airport security programs, airport contingency programs, airport emergency programs, training programs and records, quality control programs, and other documents, records and related material.
3. To facilitate these visits, DCA shall allow DHS/TSA to conduct on-site observations and assessments of security measures at the Preclearance airport, including but not limited to: Screening equipment, Screening procedures, alarm resolution procedures, access control points, access control measures, perimeter security controls, and other security controls and procedures.
4. To properly conduct these operational assessments, the DHS/TSA will also observe and assess: Screening checkpoint operations; security measures relating to passenger and baggage check-in procedures; passenger and accessible/hold baggage Screening procedures; boarding procedures; passenger/bag match procedures; and if necessary any enhanced passenger Screening measures that may be required by DHS/TSA in conducting the operational assessment.

C. On-the-Spot Assistance during Operational Assessments and Corrective Action Plans

1. DHS/TSA, with the concurrence of DCA, may provide on-the-spot assistance, as appropriate, to correct identified security gaps or deficiencies, if any.
2. If on-the-spot assistance is insufficient or inappropriate to correct identified security gaps or deficiencies during the assessment, DHS/TSA will develop, with the concurrence of the DCA, a Corrective Action Plan (CAP) with established timelines and milestones and that identifies the appropriate authority for implementation and compliance with the CAP.

III. Procedures for conducting operational assessments

- A. In accordance with Article X.C of the Agreement, DHS/TSA shall provide written notification requesting to schedule an operational assessment a minimum of sixty (60) days in advance of the visit.
- B. The DHS/TSA operational assessment team is to be composed of experts in the field of aviation security who are employees of DHS/TSA. The composition of the team (names and qualifications) will be provided to DCA prior to the visit in sufficient time to enable each Party to complete administrative arrangements for the visit. The assigned personnel are expected to perform at the high level of conduct and technical execution required by the Parties.
- C. In conducting the operational assessment, the team members may, in addition to the activities outlined in Section II.B. above, examine relevant records and documentation, conduct interviews, and observe the implementation of security measures, with aviation security personnel appointed by the DCA.
- D. DCA and other Competent Authorities of Aruba, as necessary, shall provide facilitative assistance for technical visits as follows:
 1. Assist in obtaining valid airport identification media;
 2. Provide access to facilities, including security restricted areas of airports;
 3. Make appropriate staff from their respective civil aviation administrations and the airports (or any relevant government entity responsible for aviation security regulation), and locally based commercial air transport operators and aerodrome facilities, available for interview by the operational assessment team; and
 4. Provide access to relevant files, records and documentation of DCA or those of any other relevant entity responsible for aviation security regulation, in accordance with Aruban law.
- E. MT shall facilitate these operational assessments by designating an appropriate official from the relevant civil aviation security authorities to act as a coordinator to liaise directly with DHS/TSA operational assessment team. This appropriate official is expected to serve as a facilitator and primary point of contact for the visits, and shall coordinate all necessary meetings prior to and during the visits. DHS/TSA will develop a schedule for the visits and coordinate this with MT.
- F. During a technical visit, the operational assessment team must be accompanied by a representative of the relevant civil aviation security authority during the observations and assessments at the airport and in airport facilities or areas requiring escort; this representative must be present during all meetings with air carriers.

- G. MT understands there may be exigent or unforeseen circumstances that make the advance notice required by Article III.A of this Annex A impossible or impracticable; as such, DCA shall provide DHS/TSA with the necessary assistance to conduct an operational assessment as soon as practicable and within a reasonable period of time.
- H. DHS/TSA will hold briefings with DCA regarding the operational assessments at the conclusion of the assessment.
- I. Sixty (60) days after the Preclearance assessment, DHS/TSA will provide a written summary of findings to DCA.

IV. Confidentiality

- A. The reports and findings of operational assessments are to be held in confidence and treated as Sensitive Security Information (SSI) pursuant to the requirements of Article XIII of the Agreement and Annex B to the Agreement.
- B. In accordance with the requirements of Article XIII of the Agreement and Annex B to the Agreement, the Parties shall ensure that all SSI reviewed, gathered, or produced during the course of or as a result of an operational assessment under this Annex A shall be protected from public disclosure under applicable laws, regulations and policies of the Parties, and made available only to government aviation security officials employed by the Parties whose official duties require such access and who possess requisite security clearances in accordance with the prescribed standards of the Parties.
- C. The Parties shall refrain from speaking with any members of the media or other persons not entitled to confidential information, and shall respect the respective government agencies functioning at the airport being visited.

V. Duration of this annex A

This Annex A shall remain in force until terminated in accordance with Article XVIII of the Agreement.

Annex B

To the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba

REGARDING PROCEDURES FOR HANDLING U.S. SENSITIVE SECURITY INFORMATION (SSI)

I. Purpose

This Annex B to the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba, concluded on April 7, 2016 (hereinafter "the Agreement"), sets forth the guidelines under which the Department of Homeland Security, Transportation Security Administration (DHS/TSA) and the Department of Civil Aviation of Aruba (DCA) (hereinafter, collectively referred to as "the Parties"), shall handle and protect Sensitive Security Information (SSI) exchanged between the Parties, in accordance with Article XIII of the Agreement, in furtherance of the stated purposes of, and any cooperative activities undertaken pursuant to, the Agreement. Capitalized terms used but not defined in this Annex B shall have the respective meanings given to them in the Agreement.

II. Scope

The United States may provide SSI to Aruba in furtherance of the objectives of the Agreement, including but not limited to, the development and modernization of the civil aviation security infrastructure in the managerial, administrative, operational, and technical areas, and for the development of compatible security measures, the conduct of operational testing, and when providing personnel, resources and related services to assist each other to the extent called for in the Annexes and Appendices to the Agreement, as necessary and appropriate.

III. Procedures

A. Definitions

Sensitive Security Information (SSI):

Information obtained or developed in the conduct of security activities, including research and development, the disclosure of which DHS/TSA has determined would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information obtained from any person, or be detrimental to the security of transportation.

B. Access to SSI

Security materials and information that is SSI must:

1. Not be publicly disclosed, except with the express written consent of the Assistant Secretary of DHS/TSA;
2. Be made available only to organizations or individuals determined by an authorized official of the DHS/TSA or in the case of Aruba, DCA, to be eligible for access to the information and or who have a specific need to know the information in order to perform or assist in a lawful and authorized governmental function related to transportation security; and
3. Not be passed or disclosed to: (a) any person holding the citizenship of a third country; (b) any international organization; or (c) the general public without the prior written permission of the DHS/TSA.

C. Storage of SSI

When not in use and at the end of the day, all documents and material containing SSI must be stored in a locked container, desk, or room, or if the information is stored in a computer, the computer must be locked to ensure that no SSI is compromised.

D. Marking SSI

SSI must be marked by placing a protective marking conspicuously on the top, and the distribution limitation on the bottom of:

1. the outside of any front and back cover, including a binder cover;
2. any title page; and
3. each page of the document.
4. The protective marking (header) for SSI is:

SENSITIVE SECURITY INFORMATION

The distribution limitation statement (footer) for SSI is:

SENSITIVE SECURITY INFORMATION

WARNING: THIS RECORD CONTAINS SENSITIVE SECURITY INFORMATION THAT IS CONTROLLED UNDER 49 C.F.R. PARTS 15 AND 1520. NO PART OF THIS RECORD MAY BE DISCLOSED TO PERSONS WITHOUT A "NEED TO KNOW," AS DEFINED IN 49 C.F.R. PARTS 15 AND 1520, EXCEPT WITH THE WRITTEN PERMISSION OF THE ADMINISTRATOR OF THE TRANSPORTATION SECURITY ADMINISTRATION OR THE SECRETARY OF TRANSPORTATION. UNAUTHORIZED RELEASE MAY RESULT IN CIVIL PENALTY OR OTHER ACTION. FOR U.S. GOVERNMENT AGENCIES, PUBLIC DISCLOSURE IS GOVERNED BY 5 U.S.C. 552 AND 49 C.F.R. PARTS 15 AND 1520.

E. Electronic Transmission of SSI

1. Transmittal via e-mail or the internet
Any record containing SSI must be password-protected before it is transmitted electronically via e-mail or internet. No SSI may be placed in the body of an e-mail; it must be transmitted as a password-protected attachment. The document or material being transmitted must be properly marked with the required header and footer.
2. Transmittal of SSI via fax
Unless otherwise restricted by the originator, SSI may be sent via non-secure fax. Where a non-secure fax is used, the sender must coordinate with the recipient to ensure that the materials faxed will not be left unattended or subjected to possible unauthorized disclosure on the receiving end.

F. Mailing SSI

SSI must be mailed in a manner that offers reasonable protection of the sent material, such as an opaque, unmarked envelope, and sealed in such a manner as to prevent inadvertent opening and show evidence to tampering. SSI may be mailed by the U.S. or Aruba Postal Services' First Class Mail or an authorized commercial delivery service. SSI may be entered into an inter-office mail system provided it is afforded sufficient protection to prevent unauthorized access (for example, in a sealed envelope).

G. Copying

Reproduction of documents containing SSI should be kept to a minimum and made only by U.S. or Aruba government employees.

H. Destruction

SSI must be destroyed when no longer needed and its continued retention is not otherwise required under records retention laws and regulations. Destruction must be accomplished as follows:

1. "Hard Copy" materials must be destroyed by shredding, burning, pulping, or pulverizing, so as to ensure destruction beyond recognition and reconstruction. Shredders must produce cross-cut particles that are at least no larger than 1½" by 3/16". After destruction, materials may be disposed of with normal waste.
2. Electronic records must be destroyed by any method that will destroy the record completely, so as to preclude recognition or reconstruction of the information.

IV. Duration of this annex B

This Annex B shall remain in force until terminated in accordance with Article VIII of the Agreement.

Annex C

To the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba

REGARDING THE PROVISION OF CIVIL AVIATION SECURITY TRAINING

I. Purpose

This Annex C to the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba, concluded on April 7, 2016 (hereinafter "the Agreement"), sets forth the guidelines under which the Department of Homeland Security, Transportation Security Administration (DHS/TSA), shall make available personnel on a temporary duty assignment basis to provide training to appropriate civil aviation security personnel at Queen Beatrix International Airport in Aruba (hereinafter "the Preclearance Airport"), in support of aviation security cooperation activities. Capitalized terms used but not defined in this Annex C shall have the respective meanings given to them in the Agreement.

II. Description of services

DHS/TSA shall provide a description of services in an Appendix to this Annex C to the Agreement, which shall include the number of aviation security specialists to travel to Aruba, the titles and duration of the courses, services to be provided by DCA, and any additional services to be provided by either Party.

III. Financial provisions

- A. DHS/TSA shall provide the financial provisions for services rendered in an Appendix to this Annex C to the Agreement, which shall include the estimated cost for the aviation security specialists, transportation, per diem expenses, travel, materials, administrative support, equipment and miscellaneous expenses.
- B. In accordance with Article XII.A and XII.B of the Agreement, each Party shall bear all costs, including travel expenses, associated with the participation of its own personnel in work performed under the Agreement.
- C. In accordance with Article XII.C of the Agreement, and notwithstanding paragraph III.B. of this Annex C, in the event that DHS/TSA is to provide services under this Annex C, and the Parties agree that an exchange of funds shall be made, the relevant Appendix shall stipulate that such exchange of funds is to be made in accordance with the following financial provisions:
 1. DHS/TSA shall provide DCA with an invoice detailing the final actual costs of services provided as specified therein.
 2. DCA shall ensure that the costs as stated in an Appendix to this Annex C be paid to the DHS/TSA upon receipt of an invoice.
 3. Payment shall be due within sixty (60) days from date of invoice. All payments shall include a reference to the Appendix and assigned billing number. Payments shall be made in U.S. Dollars and may be made either by check or electronic funds transfer. DCA shall ensure that all bills are paid by check or electronic transfer in accordance with direction to be provided by DHS/TSA. In the event that payment is not made within sixty (60) days from the date of billing, U.S. Treasury Department regulations prescribe and require DHS/TSA to assess late payment charges (i.e., interest, penalties, and administrative handling charges) in subsequent billings. These late charges shall be assessed for each additional thirty (30) day period, or portion thereof, that payment is not received. DCA shall ensure any such late charges are paid.

IV. Implementation

- A. The designated point of contact at DHS/TSA for the coordination and management of this Annex C, and where all requests for services and related information under this Annex C should be made, is the Office of Global Strategies.
- B. DCA is the designated point of contact for the coordination and management of this Annex C.

V. Duration of this annex C

This Annex C shall remain in force until terminated in accordance with Article XVIII of the Agreement.

Annex D

To the Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba

REGARDING PROCEDURES FOR THE LOAN OF EQUIPMENT AND RELATED MATERIAL

This Annex D to the Agreement between the Kingdom of the Netherlands, in respect of Aruba, AND THE United States of America on Civil Aviation Security for Preclearance Operations at Queen Beatrix International Airport in Aruba, concluded on April 7, 2016 (hereinafter "the Agreement"), sets forth the guidelines under which the Department of Homeland Security, Transportation Security Administration (DHS/TSA), may loan civil aviation security-related equipment and provide certain operational services to the Minister in charge of Transport (MT), at Queen Beatrix International Airport in Aruba in support of aviation security cooperation activities. Capitalized terms used but not defined in this Annex D shall have the respective meanings given to them in the Agreement.

I. Purpose

The purpose of this Annex is to provide for the loan of equipment, related material, and operational support by DHS/TSA to MT for the purpose of security Screening at the Preclearance Airport in Aruba, in support of aviation security cooperation activities to achieve comparable Screening standards for passenger and accessible property Screening for all operations of flights to the United States, as provided for in the Agreement, in order to promote and develop administrative, operational and technical cooperation in civil aviation security.

II. Description of equipment, related material and operational support

- A. DHS/TSA shall provide a description of the equipment and any related material in an Appendix to this Annex D to the Agreement, which shall include the value of the equipment and related material, any services to be rendered, any maintenance/service agreements provided by MT with the manufacturer, and any additional services to be provided by either Party.
- B. Ancillary contractor support services will not be provided by DHS/TSA.
- C. MT will provide for a maintenance/service agreement with the manufacturer, as specified in an Appendix to this Annex D.

III. Terms and conditions

- A. In connection with the loan of the equipment and related material under this Annex D, DHS/TSA, by and through its contractor/manufacturer, shall:
 - 1. Conduct factory acceptance testing at vendor's factory and/or site acceptance testing at vendor's warehouse, and return acceptance test, as needed, at the checkpoint.
 - 2. Pack and crate the equipment and related material, and ship the equipment and related material, by air freight, from a warehouse facility in the United States, to the Preclearance Airport.
 - 3. Perform initial preparation, installation, set-up, testing, calibration training, and provide spare parts, as needed.
 - 4. Be responsible for securing any export license or other documents required to permit the equipment and spare parts furnished under the Appendix to this Annex D to leave the United States.
- B. In connection with the loan of the equipment, related material, and spare parts, MT, at no cost to DHS/TSA, shall:
 - 1. Provide an adequate space and location for the initial preparation, installation, set-up, testing and calibration training, for the equipment.

2. Enter into appropriate agreements with the manufacturer for on-going maintenance and repair of the equipment and related material, to include replacement parts and components, not within the scope of the manufacturer's warranty, for the duration of the loan of the equipment and related material.
3. Pay or secure the waiver of any duties, taxes or other fees associated with the importation of the equipment and ancillary materials, supplies and parts.
4. Be responsible for securing any import license or other documents required to permit the equipment, related material, and spare parts furnished under the Appendix to this Annex D to enter Aruba, and for making the arrangements, when necessary, for the release of the equipment, related material, and spare parts from Aruba and their return to the United States.
5. In case of Explosives Trace Detection (ETD) equipment, pay for consumables after the initial 20,000 samples are consumed.
6. Upon expiration or termination of this loan, return, at MT's expense, the equipment and related material loaned under this Annex in the same manner in which it was shipped and in the same condition as received, reasonable use and wear excepted, to DHS/TSA at an address in the United States of America as specified by DHS/TSA or an address in the United States of America as specified by the manufacturer, unless by mutually negotiated written agreement, the equipment is transferred or purchased from DHS/TSA.
7. Unless otherwise specified, MT shall assume custody and possession of the equipment and related material in an "as-is" condition at the location specified in paragraph III.A.2., and shall thereafter be responsible for all operations, repairs, and maintenance costs, outside the scope and period of the manufacturer's warranty, and all consumables beyond the initial amount provided by DHS/TSA or manufacturer, as stated in this Annex D. Upon acceptance of the equipment and related material, MT shall assign a property custodial officer, and provide the name and contact information for this individual to the DHS/TSA Office of Global Strategies.
8. For the duration of the loan of the equipment and related material specified in this Annex D, MT shall maintain the equipment and related material in good working order in accordance with the manufacturer's recommendations and shall not contract with any third party other than the manufacturer, or allow any other person or contractor, to perform repair and maintenance of the equipment and/or related material without the express written consent of DHS/TSA. Nor shall MT, without the prior express consent of DHS/TSA, install or use unapproved parts or components in the equipment and/or related material.
9. MT shall be liable for, and fully insure against, any loss or damage to the equipment and/or related material upon receipt to MT until its return to DHS/TSA.
10. MT shall not, without the written consent of DHS/TSA:
 - a. Transfer (whether by gift, loan, lease, sale or other method of transfer), or make available in any form the equipment, related material, spare parts, components or software to a third party;
 - b. Take any other action that would impair DHS/TSA's interest in the equipment or ancillary parts, materials and supplies;
 - c. Take any action that would impair or violate DHS/TSA's license from the manufacturer for any proprietary software integrated into the equipment, related material, or any parts;
 - d. Modify or reverse engineer the equipment, related material, parts or proprietary software; or
 - e. Use the equipment, related material, or parts for purposes and activities other than those specified in paragraph I of this Annex D.

IV. Financial provisions

- A. DHS/TSA shall provide the financial provisions for equipment, related materials, and services rendered in an Appendix to this Annex D to the Agreement, which shall include costs incurred by DHS/TSA and its contractors during any close-out period in event of a termination by either Party, the estimated costs for materials, support, equipment and miscellaneous expenses.
- B. In accordance with Articles XII.A and XII.B of the Agreement, each Party shall bear all costs, including travel expenses, associated with the participation of its own personnel in work performed under the Agreement.
- C. In accordance with Article XII.C of the Agreement, and notwithstanding paragraph IV.B. of Annex D, in the event that DHS/TSA is to loan equipment under this Annex D, and the Parties agree that an exchange of funds shall be made, the relevant Appendix shall stipulate that such exchange of funds is to be made in accordance with the following financial provisions:
 1. DHS/TSA shall provide the MT with an invoice detailing the final actual costs of services provided as specified therein.
 2. MT shall pay the costs as stated in an Appendix to this Annex D to the DHS/TSA upon receipt of an invoice.
 3. Payment of bills shall be due within sixty (60) days from date of billing. All payments shall include a reference to the Appendix and assigned billing number. Payments shall be made in U.S. Dollars and may be made either by check or electronic funds transfer. MT shall pay all bills by check or electronic transfer in accordance with direction to be provided by DHS/TSA. In the event that payment is not made within sixty (60) days from the date of billing, U.S. Treasury Department regulations prescribe and require DHS/TSA to assess late payment charges (i.e., interest, penalties, and administrative

handling charges) in subsequent billings. These late charges shall be assessed for each additional thirty (30) day period, or portion thereof, that payment is not received. MT shall pay any such late charges.

V. Implementation

- A. The designated point of contact at DHS/TSA for the coordination and management of this Annex D, and where all requests for services and related information under this Annex D should be made, is the Office of Global Strategies.
- B. The designated point of contact at MT for the coordination and management of this Annex D is the Department of Civil Aviation of Aruba or any successor agency.
- C. It is anticipated that the Parties will assign personnel to perform the activities stipulated in this Annex D. The personnel assigned may be contract personnel and/or employees of DHS/TSA or MT. The offices designated in paragraphs V.A and V.B above shall manage specific cooperative activities under this Annex D, including mutually acceptable schedules and statements of work.

VI. No warranties

DHS/TSA makes no warranties or representations about the specific equipment or related material furnished under this Annex D, other than any manufacturer's warranty on the equipment and related material, including warranties or representations about the fitness of the specific equipment for its intended purpose. DHS/TSA assumes no responsibility for the operation, maintenance, or supply support of the equipment and related material by reason of this Annex D or any actions taken by DHS/TSA hereunder.

VII. Duration of this annex D

This Annex D shall remain in force until terminated in accordance with Article XVIII of the Agreement.

D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van het Verdrag, met Bijlagen, zullen ingevolge artikel XVIII, onder A, van het Verdrag in werking treden dertig dagen na de datum van de laatste nota van een diplomatieke notawisseling tussen de partijen waarbij de partijen elkaar ervan in kennis stellen dat de vereiste nationale procedures voor de inwerkingtreding van dit Verdrag, met Bijlagen, zijn voltooid.

J. VERWIJZINGEN

Titel : Verdrag tussen het Koninkrijk der Nederlanden met betrekking tot Aruba en de Verenigde Staten van Amerika inzake douanevoorspelling;
Washington, 2 december 1994
Tekst : *Trb.* 1994, 276 (Engels)
Laatste *Trb.* : *Trb.* 2009, 29

Uitgegeven de eerste juni 2016.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS