

No. 50926

**United States of America
and
Canada**

Agreement on air transport preclearance between the Government of the United States of America and the Government of Canada (with annexes and agreed minute). Toronto, 18 January 2001

Entry into force: *2 May 2003 by notification, in accordance with article XIII*

Authentic texts: *English and French*

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**États-Unis d'Amérique
et
Canada**

Accord entre le Gouvernement des États-Unis d'Amérique et le Gouvernement du Canada relatif à l'autorisation préalable dans le domaine du transport aérien (avec annexes et procès-verbal approuvé). Toronto, 18 janvier 2001

Entrée en vigueur : *2 mai 2003 par notification, conformément à l'article XIII*

Textes authentiques : *anglais et français*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *États-Unis d'Amérique, 18 juin 2013*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT
ON AIR TRANSPORT PRECLEARANCE
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF CANADA

The GOVERNMENT OF THE UNITED STATES OF AMERICA and the GOVERNMENT OF CANADA, hereinafter "the Parties",

CONSIDERING that preclearance facilitates air travel between the two countries and is of mutual benefit to both Parties;

CONSIDERING that preclearance should be continued (and established) for eligible flights at various locations in Canada and the United States, where the facilities and other conditions are adequate to enable the Canadian and the United States inspection agencies to carry out their missions, with respect to the examination and inspection of passengers and their possessions, aircraft crew, baggage and aircraft stores entering Canada and the United States;

COGNISANT of the reciprocal nature of this Agreement;

COMMITTED to a high standard of service and fair and equitable treatment of air carriers and passengers;

DESIRING to build upon the Air Transport Preclearance Agreement between the Government of Canada and the Government of the United States signed at Ottawa, May 8, 1974, as amended, and taking into account the related exchanges of documents between the Parties since 1995,

AGREE as follows:

Article I
Definitions

For the purposes of this Agreement:

1. "Preclearance area" means the limited and operationally contiguous part of an airport terminal designated by the Host Party within which preclearance officers exercise specified powers and authorities. It consists of an area containing: the queuing area used exclusively for preclearance purposes clearly demarcated in front of the primary inspection area; Inspecting Party primary and secondary examination areas; the departure lounges for flights bound for the territory of the Inspecting Party; connecting corridors and all designated conveyances for precleared passengers used for the transportation of passengers between sterile areas of terminals or from the terminal to the departing aircraft (e.g. buses). When travellers 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;

2. "Host Party" means the Party from whose territory passengers and goods destined to the territory of the other Party are precleared;
3. "Air industry" means scheduled and charter air carriers and airport authorities;
4. "Intransit preclearance area" means all or part of a preclearance area that is used for intransit preclearance;
5. "Inspecting Party" means the Party responsible to preclear passengers and goods destined to its territory on the territory of the other Party;
6. "Preclearance officer" means an officer designated by the Inspecting Party to carry out preclearance;
7. "Preclearance" means the procedure of conducting in the territory of one Party, examination and inspection required for entry/admission into the territory of the other Party;
8. "Goods" includes, *inter alia*, personal effects, wares of any description, means of transport, animals and plants and their products, and any document in any form, but excludes currencies and monetary instruments;
9. "Preclearance facility" means the physical inspection infrastructure including offices and administrative areas, as well as equipment, required for processing passengers and their goods;
10. "Intransit preclearance" means the preclearance of passengers and their goods coming from third countries who do not enter formally the Host Party's territory;
11. "Inspection agency" means any agency of one Party responsible for the preclearance of passengers and their goods in the territory of the other Party;
12. "Host Party Officer" means any person authorized by the Host Party's law to conduct a search;
13. "Law enforcement officer" means, for the Government of Canada, Canadian peace officers who are authorized to carry weapons and make arrests as well as members of the Royal Canadian Mounted Police; and, for the Government of the United States, U.S. federal, state and local law enforcement officers;
14. "Eligible flight" means a commercial flight of any size aircraft, scheduled or passenger charter, including ferry flights. Private aircraft flights, air taxi-type operations and state aircraft flights are not included;
15. "Post-clearance" means clearance of passengers and goods in the territory of the Inspecting Party.

12. Nothing in this Agreement affects the rights and obligations of the parties under other international agreements.

13. Activities under this Agreement are subject to the availability of appropriated funds.

14. The Parties shall implement this Agreement in a non-discriminatory and transparent manner consistent with the provisions of this Agreement.

Article III Preclearance Locations

1. United States preclearance shall be continued at airports where preclearance is conducted on the date of entry into force of this Agreement, as indicated in Annex IV. Other U.S. and Canadian preclearance may be established at airports in Annex IV in accordance with the criteria below.

2. Each Party shall take account of the following criteria when considering establishing preclearance, including at multi-terminal complexes:

(a) the airport authority requests preclearance;

(b) the airport authority attests that funding (consistent with the terms of Article IX Cost of Preclearance) is available for construction, operation and maintenance of the preclearance facility. The facility must be acceptable to the Inspecting Party. The requirements of the Inspecting Party shall be in accordance with its applicable inspection guidelines, unless clear reasons exist for modification. Where the Inspecting Party is the United States, the U.S. Department of Transportation Airport Federal Inspection Facilities Guidelines shall apply. Those facilities used by officers of the Host Party are subject to approval by the Host Party;

(c) the airport authority and participating airlines agree that sufficient trans-border traffic exists to make feasible the efficient operation of a preclearance facility, taking into account available inspection technologies and procedures.

3. In developing or modifying its inspection facility requirements, the Inspecting Party shall consider the views of the Host Country airlines and airport authorities. For the United States, these shall be expressed through Host Country representation on the U.S. Department of Transportation Federal Inspection Facilitation Committee.

4. Where modifications to preclearance facilities are essential to achieve compliance with requirements of one or both of the Parties, the requesting Party shall consult with the airport authority and establish a reasonable time frame for compliance by the airport authority.

5. Intransit preclearance shall be implemented as set out in Annex I.
6. A decision to terminate services at an existing location shall be a joint decision by written agreement of the Parties based upon a sustained and substantial decrease in traffic and after consultation with airport authorities and air carriers.
7. Addition of preclearance at a new location shall be by written agreement of the Parties.
8. Preclearance at any airport shall be contingent upon:
 - (a) the airport authority providing the high standard of security in the preclearance area as set forth in Annex II for preclearance personnel of the Inspecting Party;
 - (b) the airport authority taking all appropriate steps to protect the preclearance area and facility and the contents therein including official archives and documents maintained and used by the inspection agencies against any intrusion or damage and to prevent any disturbance of the peace on the premises;
 - (c) the airport authority ensuring that it has an airport security program that maintains the sterility of the preclearance area and restricts access to the preclearance area to authorized personnel only. A local consultative mechanism to address security concerns within the preclearance area shall be established at each airport with participation from the Inspecting Party. In determining who may have access to the preclearance area, the airport authority shall consult regularly with the appropriate local personnel of the Inspecting Party and give full consideration to the views expressed;
 - (d) the airport authority establishing, implementing and maintaining a plan for coordinating air carrier requests for preclearance of flights with appropriate personnel of the Inspecting Party at least 60 days in advance of the requested preclearance operations in accordance with Annex V.
9. If an airport authority fails to meet these conditions and the Inspecting Party considers that as a result its operations are at risk, that Party may request immediate consultations. Failure to reach a satisfactory resolution within 15 days may result in the Inspecting Party suspending the operation under discussion. When justified by an emergency, the Inspecting Party can take interim action prior to the expiry of 15 days.

Article IV
Host Party's Obligations

1. Where preclearance is conducted in the territory of the Host Party, the Host Party shall permit the Inspecting Party: