No. 55450[*]

Netherlands (for the Caribbean part of the Netherlands)
and
United States of America

Air Transport Agreement between the Kingdom of the Netherlands, in respect of the Caribbean part of the Kingdom of the Netherlands, and the United States of America, relating to air transport between the Caribbean part of the Netherlands and the United States of America. Washington, 17 January 2018

Entry into force: *1 October 2018, in accordance with article 17*

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Pays-Bas (à l'égard de la partie caribéenne des Pays-Bas)
et
États-Unis d'Amérique

Accord de transport aérien entre le Royaume des Pays-Bas, à l'égard de la partie caribéenne des Pays-Bas, et les États-Unis d'Amérique relatif au transport aérien entre la partie caribéenne des Pays-Bas et les États-Unis d'Amérique. Washington, 17 janvier 2018

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[ENGLISH TEXT – TEXTE ANGLAIS]

Air Transport Agreement between the Kingdom of the Netherlands, in respect of the Caribbean part of the Kingdom of the Netherlands, and the United States of America, relating to air transport between the Caribbean part of the Netherlands and the United States of America

The Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands,

and

the United States of America, (hereinafter referred to as "the Parties");

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and

Being Parties to the Convention on International Civil Aviation, done at Chicago on December 7, 1944;

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

1. "aeronautical authorities" means, in the case of the United States, the Department of Transportation and, in the case of the Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands, the Ministry of Infrastructure and Water Management of the Netherlands, and any person or agency authorized to perform functions exercised by the Department of Transportation or the Ministry of Infrastructure and Water Management;
2. "Agreement" means this Agreement and any amendments thereto;
3. "air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, scheduled or charter, for remuneration or hire;
4. "airline of a Party" means, in the case of the United States, an airline that has received its Air Operator's

Certificate (AOC) from the aeronautical authorities of the United States and has its principal place of business in the United States, hereinafter referred to as an airline of the United States; and in the case of the Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands, an airline that has received its AOC from the aeronautical authorities of the Netherlands and has its principal place of business in the Caribbean part of the Netherlands, hereinafter referred to as an airline of the Caribbean part of the Netherlands;

5. "Caribbean part of the Netherlands" means the islands of Bonaire, Sint Eustatius and Saba;

6. "Convention" means the Convention on International Civil Aviation, done at Chicago December 7, 1944, and includes:

a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Parties; and
b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;

7. "full cost" means the cost of providing service plus a reasonable charge for administrative overhead;

8. "international air transportation" means air transportation that passes through the airspace over the territory of more than one State;

9. "nationals", in the case of the United States, means nationals of the United States, and, in the case of the Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands, means nationals of the Kingdom of the Netherlands who are formally registered as local citizens with Dutch nationality in the municipal registry of the Caribbean part of the Netherlands;

10. "price" means any fare, rate, or charge for the carriage of passengers, baggage, or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate, or charge;

11. "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo, or mail in air transportation;

12. "territory" in the case of the United States, means the land areas, internal waters, and territorial sea under the sovereignty of the United States, and, in the case of the Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands, means the land areas, internal waters, and territorial sea under the sovereignty of the Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands, in accordance with international law;

13. "third country" or "other country" or "different country" shall include the European part of the Netherlands, as well as Aruba, Curaçao and Sint Maarten; and

14. "user charge" means a charge imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.

Article 2

Grant of Rights

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

a) the right to fly across its territory without landing;
b) the right to make stops in its territory for non-traffic purposes;
c) the right to perform international air transportation between points on the following routes:
  (i) for airlines of the United States, from points behind the United States via the United States and intermediate points to any point or points in the Caribbean part of the Netherlands and beyond; and for all-cargo service, between the Caribbean part of the Netherlands and any point or points;
  (ii) for airlines of the Caribbean part of the Netherlands, from points behind the Caribbean part of the Netherlands, via the Caribbean part of the Netherlands, and intermediate points to any point or points in the United States and beyond; and for all-cargo service, between the United States and any point or points; and
d. the rights otherwise specified in this Agreement.

2. Each airline of a Party may, on any or all flights and at its option:

a) operate flights in either or both directions;
b) combine different flight numbers within one aircraft operation;
c) serve points on their respective routes in any combination and in any order;
d) omit stops at any point or points;
e) transfer traffic from any of its aircraft to any of its other aircraft at any point;
f) serve points behind any point in its territory, with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
g) make stopovers at any points whether within or outside the territory of either Party;
h) carry transit traffic through the other Party's territory; and
i) combine traffic on the same aircraft regardless of where such traffic originates;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that, with the exception of all-cargo services, the transportation is part of a service that serves a point in the homeland of the airline.

3. On any segment or segments of the routes above, any airline of a Party may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the homeland of the airline and, in the inbound direction, the transportation to the homeland of the airline is a continuation of the transportation from beyond such point.

4. Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to take on board, in the territory of the other Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party. In respect of the United States, nothing in this Article shall be deemed to confer on its airlines the right to take on board, in the Caribbean part of the Netherlands, passengers, baggage, cargo, or mail carried for compensation and destined for a point in Curaçao or Sint Maarten, or such traffic originating in Curaçao or Sint Maarten and destined for the Caribbean part of the Netherlands.

5. Any airline of a Party performing charter international air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules of either Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each airline of the other Party shall be subject to the least restrictive of such criteria. Nothing in this paragraph shall limit the rights of a Party to require airlines of both Parties to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights. Except with respect to the consumer protection rules referred to in this paragraph, neither Party shall require an airline of the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a notice that it is complying with the applicable laws, regulations, and rules referred to in this paragraph or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.

Article 3

Authorization

1. Each Party, on receipt of applications from an airline of the other Party, in the form and manner prescribed for operating authorizations and technical permissions, shall grant appropriate authorizations and permissions with minimum procedural delay, provided that:

a) substantial ownership and effective control of that airline are vested in:
  (i) for airlines of the United States, the Government of the United States, nationals of the United States, or both;
  (ii) for airlines of the Caribbean part of the Netherlands, nationals of the Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands, as defined in Article 1 (Definitions) of this Agreement;
b) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
c) the other Party is maintaining and administering the provisions set forth in Article 6 (Safety) and Article 7 (Aviation Security) of this Agreement.

Article 4

Revocation of Authorization

1. Either Party may revoke, suspend, limit, or impose conditions on the operating authorizations or technical permissions of an airline where:

a) that airline is not an airline of the other Party under Article 1(4) (Definitions) of this Agreement;
b) substantial ownership and effective control of that airline are not vested in:
  (i) for airlines of the United States, the Government of the United States, nationals of the United States, or both;
  (ii) for airlines of the Caribbean part of the Netherlands, nationals of the Kingdom of the Netherlands, in respect of the Caribbean part of the Netherlands, as defined in Article 1 (Definitions) of this Agreement; or
c) that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement.

2. Unless immediate action is essential to prevent further noncompliance with subparagraph 1c of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

3. This Article does not limit the rights of either Party to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 6 (Safety) or Article 7 (Aviation Security) of this Agreement.

Article 5

Application of Laws

1. The laws and regulations of a Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be complied with by such aircraft upon entering, when departing from, or while within the territory of that Party.

2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew, or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine, or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew, or cargo of the other Party's airlines.

Article 6

Safety

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

2. Either Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrews, aircraft, and operation of airlines of that other Party. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time and to take immediate action, prior to consultations, as to such airline or airlines if the other Party is not maintaining and administering the aforementioned standards and immediate action is essential to prevent further noncompliance.

Article 7

Aviation Security

1. The Parties affirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on March 1, 1991, as well as with any other convention relating to the security of civil aviation to the degree in force for both Parties.

2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, operators of