

**DISCRIMINATING DUTIES—GOVERNMENT OF THE
NETHERLANDS.**

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A REPORT OF THE SECRETARY OF STATE,

WITH

COPIES OF A CORRESPONDENCE

WITH THE

GOVERNMENT OF THE NETHERLANDS,

RELATING TO

DISCRIMINATING DUTIES

JANUARY 19, 1827.

Referred to the Committee on Commerce.

WASHINGTON :

PRINTED BY GALES & SEATON.

1827.

To the House of Representatives of the United States:

WASHINGTON, 18th January, 1827.

In compliance with a Resolution of the House of Representatives, of the sixth instant, I transmit, herewith, a report from the Secretary of State, together with copies of the correspondence with the Government of the Netherlands, relating to discriminating duties.

JOHN QUINCY ADAMS.

DEPARTMENT OF STATE,

17th January, 1827.

The Secretary of State, to whom has been referred the resolution of the House of Representatives, of the sixth instant, requesting the President to communicate to the House, if compatible with the public interest, the correspondence with the Government of the Netherlands, referred to in his Message, and relating to discriminating duties, has the honor now to report, that, in conformity to a resolution of the House of Representatives, of the twenty-first January, 1825, a report, on the tenth February, 1825, was made from this Department, submitting copies of the correspondence which had taken place up to the latter period, upon the subject-matter of the present resolution, to which report a reference is respectfully requested. Copies of the correspondence, in relation to the same subject, which has since taken place, are now herewith reported. All which is respectfully submitted.

H. CLAY.

PAPERS ACCOMPANYING REPORT.

Mr. Clay to Chevalier Huygens,	-	10th Dec. 1825,	Copy,
Mr. Huygens to Mr. Clay,	-	12th do. do.	Translation,
Mr. Clay to Mr. Huygens,	-	24th do. do.	Copy,
Mr. Huygens to Mr. Clay,	-	27th do. do.	Translation,
Mr. Clay to Mr. Hughes,	-	27th April, 1826,	Extract,
Mr. Huygens to Mr. Clay,	-	15th Sep. do.	Translation,
Mr. Clay to Mr. Huygens,	-	25th Oct. do.	
Mr. Huygens to Mr. Clay,	-	11th Nov. do.	Translation,
Mr. Clay to Mr. Hughes,	-	12th Dec. do.	Extract.

Mr. Clay to the Chevalier Huygens.

DEPARTMENT OF STATE,

WASHINGTON, 10th Dec. 1825.

SIR: According to the respective regulations of the United States and the kingdom of the Netherlands, each professes to act towards the other, in regard to navigation, upon the basis of perfect reciprocity and equality. The United States have not deviated from their professions. The vessels of the Netherlands and their cargoes, consisting of the produce and manufactures of that kingdom, or of such produce and manufactures as are most usually first shipped from its ports, pay no higher duties, in the ports of the United States, than their own vessels and their cargoes of similar produce. On the seventh of March, 1823, at Brussels, Mr. Everett, then representing the Government of the United States in the Netherlands, addressed an official note to the Baron de Nagell, stating that several articles of the Dutch tariff established a difference of duties in favor of goods imported in Dutch vessels; and, in particular, that the law of the twenty-sixth August, 1822, creates, in the form of a drawback, a general discrimination to the same effect, according to which one-tenth of the duties paid upon the importation or exportation of all goods in Dutch vessels, is to be returned, with the exception of those articles, the importation or exportation of which, in Dutch vessels, is otherwise favored specifically by the Tariff. On the twenty-seventh of May, 1823, the Baron de Nagell returned an answer to the note of Mr. Everett; in which he does not contest the existence of the above provisions of the laws of the Netherlands. The Baron labored under a misconception of the views of the American Government, in supposing that it contemplated an abolition of the principle of equality which it had adopted in the ports of the United States between American and Dutch vessels, as Mr. Everett showed in his reply of the thirty-first of the same month of May. The limitation of the duration of the acts of Congress, by which that equality had been established, to the first January, 1824, having been prescribed for the purpose of bringing the whole subject under the review of our Legislature, it was accordingly again taken up, and on the seventh January, 1824, a new act was passed, (which takes effect on the first of that month,) according to which the principle of equality is applied to all foreign Powers who may be disposed to adopt it; and the continuance of this new act as to time is indefinite. The Congress of the United States supposed that the kingdom of the Netherlands had done away all discriminations unfavorable to the vessels of the United States, in a fair competition with Dutch vessels in the ports of the Netherlands; and accordingly in enumerating the foreign Powers, to which the act is to be

extended, first designates that kingdom. By the third section of the act it is declared, in effect, that its operation is to cease as to any of the nations enumerated, which shall not continue to apply to vessels of the United States the principle of equality between them and its own, of which the act is predicated. A copy of this new act of Congress was communicated to the chevalier de Reinhold, by Mr. Everett, on the twenty-second March, 1824.

It is not my intention to discuss the question presented by Mr. Everett to the Government of the Netherlands. Whatever may be the form of the law, it is manifest, that if in the ports of that kingdom vessels of the United States pay, in export or import duties, ten per cent. more than Dutch vessels, or Dutch vessels pay ten per cent. less than those of the United States, there does not exist an equality between them. This proposition is too clear to be considered as open to argument. If the Government of the Netherlands think proper to originate such a difference, or having created it, think proper to continue it, we shall not controvert its right to do so. But we are entitled to know its dispositions in this respect. I am directed, therefore, by the President, to inquire of you, if you are authorized to state that the vessels of the United States, and all goods and merchandise of the produce and manufacture of the United States, laden therein, and imported into any of the ports of the Netherlands, are now exempted from all and every discriminating duty of impost and tonnage, direct or indirect, whatsoever, other or higher than is levied upon the vessels, and similar goods and merchandise therein imported, belonging to the subjects of the Netherlands; and, especially, if the laws referred to in Mr. Everett's note herein before-mentioned, of the seventh March, 1823, so far as they have an unequal operation upon the vessels of the United States, in comparison with Dutch vessels, have been modified or repealed. It will afford the President much satisfaction to find, in your answer, that the contingency provided for in the third section of the act of the seventh January, 1824, has not arisen, and, consequently, that it is not his duty immediately to withdraw from Dutch vessels the privileges which they now enjoy in the ports of the United States, equal with their own vessels.

I pray you, Sir, to accept assurances of the distinguished consideration of your obedient servant,

H. CLAY.

TRANSLATION.

The Chevalier Huygens to the Secretary of State.

WASHINGTON, 12th December, 1826.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Netherlands, near the United States of America, has had the honor to receive the note which Mr.

Clay, Secretary of State, addressed to him, dated the 10th of this month, relative to representations made in 1823 and 1824, by the *Chargé d'Affaires* of the United States, near the Government of the Netherlands, against a deviation from the admission, at duties equal with the national ships, of American vessels in the ports of the Netherlands, caused by certain fixations of duties in the tariff of the Netherlands.

The undersigned, not being furnished with instructions in regard to this question, regrets, exceedingly, his inability to answer, in a positive manner, the demand contained in the aforesaid note : “ If the laws which gave rise to the representations of Mr. Everett, in 1823, so far as they operate unequally upon American vessels, in comparison with the vessels of the Netherlands, have been modified or repealed ? ”

The undersigned thought that the differences, in this regard, had been discussed or explained between Mr. Everett and Mr. Reinhold, charged at that time with the *Port Folio* of Foreign Affairs, and that the result of this discussion was not of a nature to suppose that an uniformity of measures between the two Governments was far distant. It may be that the change of persons in the mutual missions, and the interruption of diplomatic relations, have been the cause that the state of the question is such as is represented, without being removed or decided.

The undersigned, however, believes to a certainty, that his Government, having adopted a system of reciprocity, in its commercial relations with friendly Powers, is always disposed to apply this system in regard to the United States.

The undersigned ought to confine himself to the preceding answer to the above mentioned note of the Secretary of State, but he hastened to inform his Government, whose instructions upon the subject he has demanded.

He prays Mr. Clay to accept the assurances of his high consideration.

THE CHEVALIER HUYGENS.

Mr. Clay to the Chevalier Huygens.

DEPARTMENT OF STATE,

Washington, 24th Dec. 1825.

SIR : I have the honor to acknowledge the receipt of your note of the 12th instant, which has been laid before the President. Some surprise is felt that you have no instructions on the subject of the inequality of duties against which Mr. Everett remonstrated both to Mr. Reinhold and his predecessor. Considering the nature of that inequality, and the time which has elapsed since its injustice was clearly demon-

strated by Mr. Everett, to the Government of his Majesty the King of the Netherlands it was expected that you would have been fully authorized to give the requisite assurances of its being done away. Since you have no such authority and have referred home for instructions, the President, willing to give a new proof of his desire to cultivate the most amicable relations with the Government of the Netherlands, will refrain, until he receive an answer, from exercising the power with which he is invested by the act of Congress referred to in my former note. That act leaving him no alternative, in the event of the persistence of your Government in maintaining the inequality alluded to, it is expected, after all that has occurred, that you will lose no time in obtaining and communicating to this Department information whether it be intended so to persist or not.

I pray you to accept the renewed assurances of the distinguished consideration of

Your obedient servant,

H. CLAY.

TRANSLATION.

The Chevalier Huygens to the Secretary of State.

WASHINGTON, 27th December, 1825.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Netherlands, has the honor to acknowledge the receipt of the note which Mr. Clay, Secretary of State, addressed to him, on the 24th of this month, to communicate to him the friendly intentions of the President, with regard to the expectation of an answer or decision of his Government, on the representations made by Mr. Everett, respecting an inequality of the duties of tonnage borne by American ships, in comparison of those borne by vessels of the Netherlands. The undersigned returns his thanks for this communication, and for the desire which it expresses, of cultivating the most friendly relations with the Government of the Netherlands, and will hasten to transmit it, as he has not failed to do with the preceding note of the Secretary of State, of the 10th of this month, upon the same subject; and sure of the reciprocal sentiments entertained by His Majesty the King of the Netherlands, for the United States, the undersigned flatters himself that he will receive, with the least possible delay, the instructions required.

He prays Mr. Clay to accept the repeated assurances of his high consideration.

C. D. E. J. BANGEMAN HUYGENS.

*Extract of a letter from Mr. Clay to Mr. Hughes, Chargé d'Affaires
U. S. to the Netherlands, dated*

DEPARTMENT OF STATE,

WASHINGTON, 27th April, 1826.

"I have received no assurance from Mr. Huygens that the inequality in the ports of the Netherlands, between American and Dutch vessels, which forms the topic of my letter to him, under date of the 10th of December last, has been removed. You will again bring that subject before the Government of the Netherlands, and express the just expectation of the President, that it should be, forthwith, done away, if it yet continues in operation."

TRANSLATION.

The Chevalier Huygens to the Secretary of State.

WASHINGTON, 15th September, 1826.

SIR: Furnished with instructions relative to the demands which you did me the honor to address to me, of the 10th and 24th of December, 1825, in regard to an article in the tariff of the Netherlands, of the 22d August, 1822, which grants a restitution of 10 per cent. on the duties of merchandise imported and exported under the national flag, I am now authorized to explain to the Government of the United States, the system which governed that of the Netherlands in this matter.

When, in 1817, negotiations were commenced between the two Governments, to relieve the languishing and interrupted commerce between the two nations, and to favor their relations, it was intended to obtain, by mutual concessions, reciprocal advantages. At this period, the flag of the United States already enjoyed in the Netherlands all the advantages which flowed from the liberal system which was then predominant. This system preceded what the United States wished to obtain; for, by the legislation of the Netherlands, the Americans were permitted to import and export any productions, without exception of origin, upon paying the same duties as national vessels, with the exception of only a few articles. The Americans were, besides, permitted to navigate to the Colonies of the Netherlands.

The Government of the Netherlands does not think new concessions necessary, to strengthen the existing grievances against the *discriminating duties* which press upon its commerce in America. It is also authorized to think, that the report of the American Commissioners upon the fruitless issue of the abovementioned conferences, directed Congress in its deliberations, on the passage of the act of 20th April, 1818.

This act was considered in the Netherlands as a commencement of a system of reciprocity; and they flattered themselves, it is true, that

the advantages granted by this act to the national flag, over the flags of other nations, would have a salutary effect upon the navigation, and produced the hope that it would pave the way to the establishment of the ancient commercial relations between the two countries.

But experience has proved, that the direct relations continue languishing, and that the American flag alone possessed the advantages which the liberal system in the Netherlands presented to it. It was observed that, during six years, no amelioration took place in the direct navigation of the Netherlands in the United States, and that, during this time, the flag of the Netherlands had scarcely participated in it.

From Rotterdam, where, formerly, the commerce with America had been very active, not a single vessel under the national flag had been despatched; from Amsterdam and Antwerp, the number was confined to a few. On the contrary, these ports had been visited by a number of American ships.

These, therefore, have alone derived the advantages of the equality of duties, whilst the ships of the Netherlands have obtained, if I may so speak, no benefit from the act of 20th April, 1818; and if this act was not sufficient to encourage new speculations, and to excite emulation in the flag of the Netherlands, it ought to be still less expected from that of the 7th January, 1824. This act, instead of fulfilling the concession which might, in justice, be expected, diminishes the advantages stipulated by the former. This general measure, granting to almost all the commercial nations of Europe rights which had been granted, lately, to the Netherlands alone, by generalizing them, dispelled the illusion, if I may so speak, of the advantages which the act of the 20th April, 1818, had produced.

In this state of affairs, the Government of the Netherlands did not expect a renewal of the representations against the tenth article of the law of 26th August, 1822. It flattered itself that the Government of the United States had admitted the explanation, "that by the tariff of the Netherlands, the duties of entry and clearance are, in general, the same for all foreign, and the national, flags, and that the reimbursement of the ten per cent. only aimed at the encouragement of maritime building, and can only be considered as a premium or gratification."

In effect, this ten per cent. is not a diminution of the duties of navigation, properly speaking, because it is not calculated by the capacity of the ships, but is granted upon the duties of entry for merchandise loaded on national ships, and is, consequently, entirely conformable with the duties of the tariff; the amount of reimbursement depending upon the nature of the objects of which the cargo is composed, so that it may be more considerable for a small vessel than for a large ship, according as the merchandise loaded thereon is liable to pay more or less duties. It is not, then, in reality, from the duty of tonnage, on which, in the first instance, the reciprocity is applicable, that the representations of the United States can draw the question. Upon consideration, the Government of the Netherlands cannot help

thinking that they have demonstrated, that the representations of the *Chargé d'Affaires* of the United States, in 1823 and 1824, were not based upon a system of reciprocity; and it is probable that, if Mr. Everett had not gone away during the deliberations on a new report which was about to be made upon this matter, he would have understood that there were no reasons for granting the reimbursement of ten per cent. of the duties of entry and clearance to American ships, which he claimed.

These were the circumstances, Sir, when the notes, which you did me the honor to address me on the 10th and 24th December last, arrived in Holland, and they caused the matter to be taken into consideration anew.

In order to understand, with certainty, if the state of the navigation between the Kingdom and the United States could actually admit of a more favorable reception of the abovementioned representations than in 1823 and 1824, the state of the ships and their cargoes, which sailed between the Netherlands and the United States, in the three last years, was taken.

It is evident, from this table, that there were entered, in the ports of the Netherlands, under the American flag,

In 1823,	-	-	-	136 ships.
1824,	-	-	-	98 do
And, during the first six months of 1825,	-	-	-	55 do
Under the flag of the Netherlands,				
In 1823,	-	-	-	2 ships.
1824,	-	-	-	5 do
And, during the first six months of 1825,	-	-	-	5 do
And cleared under the American flag,				
In 1823,	-	-	-	65 ships.
1824,	-	-	-	97 do
And, during the first six months of 1825,	-	-	-	66 do
Under the flag of the Netherlands,				
In 1823,	-	-	-	6 ships.
1824,	-	-	-	11 do
During the first six months of 1825.	-	-	-	7 do

This disproportion in the number of American and national ships engaged in the commerce between the two countries, is too striking not to recognize in it the inequality of advantages which exist in the reciprocal relations, and ought to convince the Government of the Netherlands that the legislative provisions of the United States in favor of its flag, had produced no benefit to it.

The cause of this difference in the navigation of the two nations ought to be principally attributed to the tendency of the tariffs of duties in the two countries, by which, although the ships of the Netherlands, and their cargoes, are treated in the American ports on the same footing as the national vessels, they are still in a worse condition than the American ships, and their cargoes, in the ports of the Netherlands, even if they were considered only as foreign vessels.

And how could the ships of the Netherlands transport their merchandise to the United States, when they find there the principal productions of the kingdom, as, for example, Geneva, sail cloth, cheese, and many other articles, charged so high as to pay, calculated from the original price, from 50 to 100 per cent. of the value. These articles, justly including a part of the provisions and necessaries of the crews, with which it may be useful, sometimes, for the captains to part with, or which they are often obliged to sell, the impost upon them presses essentially upon the navigation, as, also, the dues of pilotage, upon the footing of foreign ships, as they have been demanded and paid, even recently, at Norfolk, by the brig Mary, Captain James Almeida. But another disadvantage to the ships of the Netherlands, in the ports of the United States, is found in the facility of desertion, and the power which the tribunals claim in the differences between the crews, without admitting the claims of the consuls on this subject, or acknowledging their right of decision. In fine, in the limitation of the cargoes which the ships of the Netherlands are permitted to bring to America, to duties equal with the Americans.

It is easy to conclude, from hence, on one side, that the reciprocity of duties of navigation for the ships of the Netherlands, to an equality with those of the United States in American ports, is of little or no utility to the former, because the merchants of the kingdom can find no profit to charge upon the merchandise entering into their commerce, and more especially the products of the national industry, on account of the excessive duties imposed upon them; and that the owners or captains cannot be tempted to offer facilities in the freight. On the other hand, it is evident that, in consequence of the liberal stipulations of the tariff of the Netherlands, especially in regard to the products of the United States, and the equality of the duties of tonnage, the American ships may bring, continually, their merchandise, with advantage to the Netherlands, although some articles, as coffee, sugar, &c. are subjected to a heavier duty than national vessels pay, and although they do not receive a restitution of ten per cent. To this it may be added, that, by a law of 24th March last, which was put in force on the 1st of April following, and which I take the liberty of enclosing, the duties of entry upon cotton, tobacco, and sugar, all prime articles of importation for Americans, have been fixed so low that they amount scarcely to one per cent. of the value. Besides, it is to be observed that the ships of the United States do not pay in the ports of the Netherlands higher pilotage dues than national ships. Moreover, the Consuls of the United States are in full possession of the rights and prerogatives which the Consuls of the most favored nations enjoy in the Netherlands. Their decisions, in point of differences between American crews, are respected; and the authorities comply, without difficulty, to their claims for the restoration of deserters.

All these advantages to the American flag ought not to be forgotten, and it must be acknowledged, that the navigation and commerce under this flag, any thing appearing to prove a different treatment,

much more favored in the Kingdom, than the navigation and commerce under the flag of the Netherlands are, in the United States, although it be treated on the footing of the national flag.

From this explanation, one must justly be convinced, that the Government of the United States has no subjects of real complaints, in regard to the treatment which its flag experiences in the Netherlands; but, it may see, on the contrary, in the new dispositions of the tariff, the liberality of the customhouse system of the Netherlands. It will be observed, at the same time, that an equal treatment of American ships with the national, with regard to the premium of 10 per cent. could be based only upon a reciprocal advantage for the commerce of the Netherlands, relative to the duties of importation in America.

In consequence of this system, I am authorized to express to the Government of the United States, the desire and good will of his Majesty the King of the Netherlands, to have, ulteriorly, a fellow feeling with the President, in case of a similar disposition, and a wish to consent to a reciprocal diminution of the duties of entry upon the original merchandise of the Netherlands, or brought with ships under its flag, so that, in consenting to new advantages to American ships in the Netherlands, its flag may also reciprocally receive a more advantageous treatment than at present, in the ports of the United States, and that, on this hypothesis, agreements may be adopted, in regard to merchandise, as well as to the subject of navigation, all which, by favoring the prosperity of the two nations, may, at the same time, draw closer the bonds of amity which exist between the two Governments.

Be pleased to accept, upon this occasion, the assurances of the high consideration with which I have the honor to be, Sir,

Your most humble

And most obedient servant,

C. D. E. J. BANGEMAN HUYGENS.

Mr. Clay to the Chevalier Huygens.

DEPARTMENT OF STATE,

Washington, 25th October, 1826.

SIR: I have the honor to acknowledge the receipt of your note of the 15th ultimo, communicating, according to instructions received by you from the Government of the Netherlands, the explanation which it has to offer, of the inequality existing in the ports of that Kingdom, between the duties to which vessels of the United States and National vessels are subjected. The President, to whom I have submitted your note, has been anxious to find, but has been unable to perceive in it, a satisfactory explanation of that inequality.

The negotiations in 1817, to which you refer, had in view, among other objects, that of placing the vessels of the two countries, in their respective ports, upon a footing of perfect equality, in regard to impost and tonnage duties, so as to leave a fair competition between them, in the transportation of the subjects of commerce. The act of Congress of the 20th April, 1818, was founded upon express assurances from the Government of the Netherlands, that no inequality existed, in the ports of the Netherlands, between the vessels of the two countries in the above particular; and it accordingly repeals the discriminating duties of the United States, in regard to Dutch vessels, the repeal to take effect from the time the Government of the Netherlands abolished the discriminating duties on its part. All that had passed between the Governments of the two countries on this subject prior to the article in the tariff of the Netherlands of the 22d August, 1822, entitled us to conclude, that there was a perfect understanding between them that no discriminating duties should exist in the ports of the one operating to the disadvantage of the vessels of the other. This mutual understanding ought to have all the effect of a solemn contract; and the United States have accordingly so treated it, from the passage of their act of Congress in 1818, to the present time. For more than four years have their vessels been subjected to a charge, in the ports of the Netherlands, of ten per cent. on their cargoes, greater than is paid by Dutch vessels. We have, again and again, remonstrated against this inequality: and now, we are informed, in your note, as a reason for not fulfilling the engagement, that the navigation of the Netherlands has not derived all the benefit which its Government anticipated, from the equalization of duties. If that, even were the result of experience, it certainly could afford no justification for the non-execution of an arrangement which ought to be regarded as guarantied by national faith.

The Government of the United States demands no new concessions from that of the Netherlands. It requires only, that the equality which had been stipulated by their mutual laws, and which had existed prior to the tariff of August, 1822, shall be fairly enforced. It can perceive no reason for not giving effect to that stipulation, in the state of the trade between the United States and the ports of Rotterdam, Amsterdam, and Antwerp, which is described by you. The President would be happy to see the greatest commercial activity prevailing between those, and all other ports of the Netherlands, and the United States; but that is a matter beyond the control of either Government, and must be left to the wants of consumption and to individual enterprise. Nor can it be admitted, that the Government of the Netherlands is justified in making the discrimination which exists in its ports, by the fact of the act of Congress of January, 1824, having extended to other Powers the same liberality which our laws dispensed to the Netherlands. We came under no restriction in that respect, to your Government; and it is the desire of the United States, to place their navigation with all countries on the equal and liberal footing of perfect reciprocity.

We can comprehend very clearly, that the aim, as you state, of the restitution of ten per cent. of the duties levied in the ports of the Netherlands in behalf of Dutch vessels, is to encourage them. The object of our discriminating laws was to encourage our navigation. Relinquishing that object, and depending on equal competition, we abolished them in regard to the Netherlands, and placed the vessels of the two countries, in that respect, in our ports, in a condition of entire equality. And it is precisely because the tendency of the 10th article of your tariff is that of encouragement to Dutch vessels, and discouragement to all foreign vessels, including American, that is disturbs the equality which ought to exist between Dutch vessels and those of the United States, that we are authorized to expect its repeal. The fact of the existence of the inequality cannot be affected by the form of the privilege which is enjoyed. Whether it be that of a direct bounty to the native vessel, or compels the foreign vessel to pay more, and allows the native to pay less duty, or be laid upon the cargo, or upon the tonnage, the effect is the same. The object of a mutual abolition of discriminating duties, in the ports of the two countries, was to leave to their vessels a fair and equal competition in the transportation of commodities between them. But can such an equality of competition exist, if, in the ports of one country its vessels pay 10 per cent. less than those of the other, or, what is in effect the same thing, after paying a like amount of duty, receive back 10 per cent. of that amount?

You remark, that the ten per cent. is not a diminution of the duties of navigation, because it is calculated, not upon the capacity of the vessel, but on the amount of duties on the cargo with which she may be laden. But its effect is the same; that is, to favor the Dutch tonnage employed in the trade between the Netherlands and the United States.

Protesting against the principle, that a nation is absolved from the duty of fulfilling its engagements, because it has been disappointed in the degree of benefit which it expected to derive from them, the table which you exhibit, of the relative amount of tonnage employed in the trade between the United States and the Netherlands, admits of several observations. Assuming the facts which it presents to be correct, it shews a gradual increase of the Dutch and a diminution of the American tonnage, during the two years and a half which it comprises. The marine of the Netherlands was almost destroyed during the long wars which originated out of the French Revolution. The ten years which had intervened since their conclusion, were not sufficient to restore it to its ancient flourishing condition. The first object of the Government, and of the enterprise of the Dutch merchants, was probably to revive the intercourse with their distant Colonies, and in that their marine was principally employed. Time is necessary to establish the habits, and to create the mercantile marine necessary to a foreign trade; and, accordingly, the table shews that time is working, slowly but certainly, its usual effects.

It cannot be admitted that the state of our tariff operates more to the disadvantage of the tonnage of the Netherlands, than to that of the United States. If it prevents some exchanges which might take place on a lower scale of duties, that affects alike the tonnage of both countries. Whatever may be the amount of transportation between them, if the vessels and their cargoes, of both, are liable only to the same duties, the equality of the competition between them, so far as it depends upon legislation, will be preserved; and those of each will have a fair opportunity of sharing in the transportation, whether it be chiefly from the ports of the one country, or of the other. As to the application of the American tariff to the produce of the Netherlands, it must be remarked, that it is received upon the footing of that of the most favored nation. It unfortunately happens that the articles of Geneva, sail cloth, and cheese, which you particularise, are similar to those which our own country produces; and our tariff was not arranged with any reference to its particular operation on Dutch produce, but with the general purpose of protecting American industry. The articles, on the contrary, of cotton, sugar, and tobacco, not being products of the Netherlands, may be admitted at a low rate of duty, not only without injury, but, as it respects the first, especially, with great encouragement to the industry of the Netherlands.

The understanding which existed between the two Governments, in relation to the abolition of discriminating duties, did not embrace the subjects of pilotage, and the jurisdiction which ought to be exercised by the Consuls of the two countries over seamen deserting from their respective flags. Pilotage is regulated, under the authority of an act of Congress, by the laws of the several States. It is not known that those laws generally make any discrimination between a foreign and the native flag; and if such difference were made in the case of the brig *Mary*, we have no other information of it but that which is contained in your note. If no higher duties are paid by American vessels than those of the Netherlands, in the waters of the latter, the Government of the United States would readily apply the principle of equality, adopted in reference to discriminating duties, to the demand for pilotage. As to the control of the Consuls of the Netherlands over deserting seamen, the Government of the United States would be willing to enter into any agreement founded on mutual convenience and reciprocity.

With respect to the desire of the Government of the Netherlands, which you are authorized to express, to treat with the United States for a mutual reduction of duties of impost, I have the honor to state, that the policy which this Government has hitherto adopted, has been to reserve to itself, exclusively, the judgment of the proper rate of those duties. In fixing it, equality has been alike dispensed to all nations. The circumstances of no two given countries are of such exact resemblance, as to admit of the same rate of duty for both. The United States are not, therefore, prepared to change their established policy. There is a manifest distinction, however, between the standard of duties which is applied to the articles of a commerce be-

tween two countries, and the principle of equality in the transportation of those articles by the vessels of the same countries. Leaving each free to impose such duties as the state of its revenue, of its institutions, and of its domestic industry, may seem to require, there is nothing to prevent the operation of a rule of fair competition between the vessels of the two countries, by each being allowed to export, or import, at the same rates of duty for vessel and cargo. The laws of the United States and of the Netherlands, professed to establish such a rule. The Dutch tariff of 1822 violates it; and I am, therefore, directed anew to express the expectation of the President, that the equality will be restored, and the hope that your instructions will spare him the necessity of performing the duty which is enjoined by the act of Congress, of January, 1824.

I avail myself of this occasion to tender you assurances of my high consideration.

H. CLAY.

[TRANSLATION.]

The Chevalier Huygens to the Secretary of State.

WASHINGTON, 11th November, 1826.

SIR : I have had the honor to receive, on the 1st of this month, the note which you addressed to me under date of the 25th ult., in answer to the explanation which I was charged to make to you, on the 15th September last, in respect to the system which directs my Government in the claim of the Government of the United States, in favor of their flag, touching the restitution or premium which the tenth article of the tariff of 1822, of the Netherlands, grants to national vessels, on the duties of importation and exportation of merchandise.

The President not being satisfied with the explanations given, and not admitting the reasons alleged for considering this article as not applicable to the duties of tonnage equalized between the two countries, I think for the interest of the reciprocal relations, that I ought to add to the above cited explanation the following observations :

From the commencement of the relations between the United Provinces of the Netherlands, and the United States of America, founded and stipulated by the treaty of 1782, and faithfully maintained until the war of Europe, and, in fine, the invasion of the United Provinces of the Netherlands by a foreign Power, suspended these happy relations, the American flag was there treated on an equality with the National flag, which enjoyed a perfect reciprocity in the United States. At that time, however, the tariff of the United Provinces of the Netherlands granted advantages to certain branches of the National navigation. For example, the National vessels, destined to the whale fishery, at that time very numerous, paid $8\frac{1}{2}$ to 12 per cent. less than foreign vessels on their cargo. The vessels of the India Companies were equally, but otherwise, favored. This circumstance proves that,

at all times, and when a formal treaty between the two countries, based upon a system of liberality and reciprocity, was in force, such advantages were admitted without appearing to derogate from that system. The present Government of the Netherlands, in making the tariff of 1822, only acted on the same principle, without thinking that it was restrained in the formation of the law, by that which admits the equality of the duties of tonnage, in favor of the American flag.

The United States find themselves, in this regard, in the same predicament with all the Powers which have equalized the duties of tonnage with the Netherlands, by the consideration that the tariff in question does not derogate from their rights, and there would, therefore, occur a particular concession to the United States, in applying the tenth article of the tariff of 1822, to the merchandise loaded on American bottoms. In this acceptance, the Government of the United States do not pretend to it; yet that of the Netherlands cannot grant it but by considering it thus, and against some conventional equivalent.

The desire of His Majesty the King of the Netherlands, to favor and extend the navigation and commerce between his Kingdom and the United States, is well known, and of the sincerity of his dispositions the President cannot be in doubt. His Majesty has given unequivocal proofs of it, from his coming to the Throne. To the time when Belgium was united to the Kingdom of the Netherlands, His Majesty, without knowing the reciprocal dispositions of the Government of the United States, admitted, without hesitation, the bases of the treaty of 1782, and caused them to be applied to the navigation and commerce of the United States. The Americans were immediately placed in the position of the most favored nation. This was in the confidence, and hope, of finding their intentions reciprocal; but still encountering, in the system of legislation of the United States, difficulties in this respect, His Majesty only obtained, at first, from their Government, promises, and especially, on the subject of the existence or renewal of the treaty of 1782, evasive answers. Nevertheless, His Majesty did not relax in his system of concessions, and the constant instructions to his Legation prove the value which he set upon the re-establishment of the ancient relations between the two countries. I can cite, on this subject, the notes sent by his *Chargé d'Affaires*, on the 4th April and 16th of September, 1816. But the hesitation of the Government of the United States, on its side, to adopt a system of liberality and reciprocity towards the navigation and commerce of the Netherlands, continued. In the month of August, 1817, when the conferences commenced for the making of the treaty of commerce, no change was effected, and the flag of the Netherlands was always treated in the United States, as a foreign flag. The American Plenipotentiaries, however, were convinced that the navigation and commerce of their country were in the full enjoyment, not only of all the rights which the second article of the treaty of 1782, granted them, but over and above, of new advantages. Among these advantages may be ranked as one of high importance, the navigation to the

King's possessions in the Great Indies, against which a direct equivalent could not be given by the United States, they not having Colonies.

His Majesty might have expected to learn, by the agency of Plenipotentiaries, that their Government had, or would, apply the act of Congress, of 3d March, 1815, to the flag of the Netherlands; but instead of this weak act of reciprocity, the Plenipotentiaries commenced by demands to which His Majesty was not authorized to subscribe. In fine, it was only on the 20th of April, 1818, that Congress especially abrogated "the *discriminating duties*, imposed upon the flag of the Netherlands, in regard to the duties of tonnage, as well as in relation to the produce or manufactures of the Territories of the King in Europe, or such produce and manufactures as can, or ought to, be considered as habitually loaded, originally, in the ports of the Kingdom."

The Government of the Netherlands considered that law as an act of reciprocity, as to the duties of tonnage, and as a partial and limited concession in regard to the duties of importation on merchandise loaded under its flag. It was satisfied to see in the act of Congress, that disposition to favor the navigation and commerce between the two countries, even beyond what the President thought he was able, or ought, to propose. The news of it was received in the Netherlands with that feeling which so voluntarily appears in a nation which had the recollection of ancient relations advantageous to the two countries, and which saw in the act of Congress a disposition favorable to their entire renewal. It was agreeable to recognize in it the commencement of the application of the basis of the treaty of 1782, and it was hoped that the United States would continue to remove the restrictions which were contrary to them. This treaty did not limit the merchandise which might be imported into America, to equal duties, by the ships of the United Provinces of the Netherlands, nor restrain them to a direct navigation. And if the treaty were no more in force, it was expected, from the principle of reciprocity proclaimed by different acts of the United States, since it had been formally communicated, that no limitation restricted the American flag in the Netherlands. But this expectation was deceptive. After having, for a long time, given to the American flag the enjoyment of the advantages which they had in the ports of the Netherlands, and, above all, to the Great Indies, from which it was formerly excluded, and where there was no obligation to admit it, the flag of the Netherlands continued, during four years, to navigate, with a disadvantage too evident to admit of an illusion, upon the unequal position of the privileges of the two flags. That of America being able to import and export all merchandise whatever, in the Netherlands, from all parts of the world, and to all its ports, and that of the Netherlands being limited in the cargo, and to a direct navigation to the American ports, conjoined with other inconveniences existing for it in these ports, could no more enter into competition with the former in the commercial movement between the two countries.

If, then, in 1822, the Government of the Netherlands adopted a general measure in its tariff, by a restitution, at the expense of the

Treasury, and which was not imposed upon commerce, to countervail the inequality of the position between the national and foreign navigation, in its own ports as in foreign ports, this was only a consequence of that inequality.

After the enumeration of the disadvantages to the flag of the Netherlands, which, antecedently, I have taken the liberty to submit to your consideration, and to discuss in the conference which you granted me, it appears to me conciliatory, on the part of my Government, to have taken the measure in question, instead of recriminating means, which it might have adopted to remedy the false position of the national flag. If it has preferred the measure, the expenses of which it alone bears, it is not for foreign Powers which have been the cause of it, to complain. It is the Netherlands that have suffered, and still suffer, by not receiving elsewhere, for the national flag and its commerce, the advantages which the other flags reap in her ports. The patience and perseverance which the King has employed in waiting for the display of the liberal system which ought to extend the navigation and the commerce of the world, of which the Netherlands have given the first example, will be surely appreciated, one day, by all the commercial nations, which, long fearing, from different motives, to pursue this system, appear, now, disposed to give it fulfilment. The conventions recently concluded between the United States and Denmark, as well as with Guatemala, leave no doubt that the Government of the United States wishes to put said system into execution, and the King, my master, will see with pleasure, I think, laid down in these acts, the same principles which form the basis of the treaty of 1782, and of his commercial legislation.

In this state of things, can it be that the commercial relations between the two countries present differences to be discussed? Yet, as long as the application of a system of perfect reciprocity is retarded, or refused, in the United States, in regard to the navigation and commerce of the Netherlands, it appears to me that there is no room for insisting on the application of the tenth article of the tariff of 1822, in favor of American ships.

It is unquestionable that the commercial relations between the two countries, before being settled, render voluntary every act of concession on either side; and it is for each Government to judge if that which it receives is analagous to that which it grants. In the present position, I know of no other engagements between the two Governments. There are between them, for the moment, only acts of reciprocity which are characteristic of justice, equity, and friendship.

The Government of the United States is not supposed bound to maintain the act of Congress of 20th April, 1818, which granted a particular concession to the navigation and commerce of the Netherlands, above other nations; and the Government of the Netherlands has not objected to the act of the month of January, 1824. Yet it was no less true that this latter act lessened the advantages which accrued to the flag of the Netherlands from the former. On the other hand, there is no obligation on the Government of the Netherlands

not to lessen the advantages which the flag of the United States enjoys in her ports. It would, certainly, be more advantageous to the two nations to leave that precarious legislation, and to be bound by liberal and reciprocal conventions, and it must be hoped that the increasing and generally felt interest to favor, by all reasonable concessions, the relations between the nations, will soon bring about this state of things between two nations whose prosperity can only be a mutual benefit.

Besides, Sir, I have transmitted the above mentioned note with which you honored me, to my Government, and have submitted to it the considerations which it demands.

I pray you, on this occasion, to accept the renewed assurances of my high consideration.

C. D. E. J. BANGEMAN HUYGENS.

Extract of a letter from Mr. Clay to Mr. Hughes, dated

DEPARTMENT OF STATE,

WASHINGTON, 12th Dec. 1826.

“The departure of Mr. Huygens, the son of the Dutch Minister, affords an opportunity of acknowledging the receipt at this Department of your despatches, numbered and unnumbered, to the 18th October last, inclusive; and of transmitting the President’s message, with the documents from the Department of State, communicated to Congress at the commencement of the present session. I add copies of such correspondence, not previously put in your possession, as has passed between the Dutch Minister and me, since your departure from the United States.

“From the message and that correspondence, you will observe that the two Governments have not been able to come to any agreement, on the subject of the discrimination made in the ports of the Netherlands, in behalf of Dutch vessels, to the disadvantage of those of the United States; and that the President has referred the whole affair to Congress. It is probable that Congress will, during the present session, provide by law for the inequality. What may be the nature of the enactment which they may think proper to make, it would be premature now to intimate. We regret very much the perseverance of the Government of the Netherlands in a system which is manifestly at variance with their professions, and with that fair reciprocity which had been promised on both sides, but which has been enforced by us only. We might be more disposed to acquiesce in the present state of the Dutch law, if the example would not have an injurious effect upon our relations with other maritime Powers, with all of which it is our anxious desire to adopt the liberal principle of equal competition and perfect reciprocity.”

t
c
l
v
t
i
c
s