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NORTH AMERICA. No. 5 (1876).

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CORRESPONDENCE

RESPECTING THE

NON-ADMISSION OF FISH AND FISH OILS,

THE PRODUCE OF

BRITISH COLUMBIA,

INTO

THE UNITED STATES,

FREE OF DUTY,

UNDER THE TREATY OF WASHINGTON, MAY 8, 1871.

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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Correspondence respecting the Non-admission of Fish and Fish Oils, the produce of British Columbia, into the United States, Free of Duty, under the Treaty of Washington of May 8, 1871.

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No. 1.

*Sir E. Thornton to the Earl of Derby.—(Received April 26.)*

My Lord,

*Washington, April 12, 1875.*

I HAVE the honour to inclose copy of a despatch which I have received from the Governor-General of Canada, and of its inclosures, relating to the refusal of the United States' Customs authorities to allow the importation free of duty of fish and fish oil from British Columbia, in accordance with the provisions of Article XXI of the Treaty of May 8, 1871.

His Excellency requests me to take such action in the matter as I may think proper; but as British Columbia did not form a part of the Dominion of Canada when the above-mentioned Treaty was signed, I hesitate to make any representation to the Government of the United States upon the subject until I shall receive your Lordship's instructions to do so.

It is, however, true that the United States' Act of Congress of March 1, 1873, when British Columbia certainly did form a part of the Dominion of Canada, enacts that fish oil and fish, being the produce of the fisheries of the Dominion of Canada, and of Prince Edward Island, shall be admitted into the United States free of duty.

I have, &c.

(Signed) EDWD. THORNTON.

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Inclosure 1 in No. 1.

*The Earl of Dufferin to Sir E. Thornton.*

Sir,

*Government House, Ottawa, April 8, 1875.*

I HAVE the honour of inclosing, for such action as you may think proper, a copy of an approved report of a Committee of the Privy Council respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington under which fish and fish oil, or the produce of Canadian fisheries, are entitled to admission into the United States free of duty.

I have forwarded a copy of the Minute of Council for the information of the Secretary of State for the Colonies.

I have, &c.

(Signed) DUFFERIN.

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## Inclosure 2 in No. 1.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General, on the 1st day of April, 1875.*

ON a Report dated 31st March, 1875, from the Honourable the Minister of Customs, representing that he has been given to understand that the United States' Customs Officers at San Francisco and other ports deny the right of the Province of British Columbia to participate in the terms of the Washington Treaty, which provide for the admission free of duty of fish and fish oil, &c., the product of the Canadian Fisheries, and demand and collect duties upon the same as if the said Treaty had not been made, and further representing that the interpretation given to the law of this Dominion, which was enacted to give effect to the said Washington Treaty, is, and always has been, that fish and fish oils, &c., as therein provided, are equally entitled to free entry in British Columbia, as in all other Provinces of the Dominion, and he submits a copy of the opinion of the Honourable the Minister of Justice on the subject, dated 5th February, 1874. He therefore requests that the case be brought under the notice of Her Majesty's Ambassador to the United States at Washington, with a view to the adoption of proper measures for the removal of the illegal restrictions imposed on the imports of such articles from British Columbia into the United States.

The Committee concur in the above Report, and advise that a copy of this Minute and of the report of the Minister of Justice therein referred to, be transmitted to Sir Edward Thornton.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

## Inclosure 3 in No. 1.

*Report by the Minister of Justice of Canada.*

*Department of Justice, February 5, 1874.*

REFERENCE is made by the Department of Marine and Fisheries as to whether fish oils from the Province of British Columbia are admissible into United States' markets duty free under the Treaty of Washington.

By Article XXI of the Treaty of Washington, fish and fish oil, the produce of the United States' fisheries or of the Dominion of Canada, shall be admitted into each country free of duty.

By Article XXXIII, Article XXI, &c., shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial and Canadian Parliaments on the one hand, and the United States' Congress on the other.

The Treaty itself bears date the 8th May, 1871, and is, as to these clauses, in effect a proposition of the Commissioners for free exchange of the commodities named, should each country see fit to pass laws covering the suggestion.

The real agreement and its terms are to be looked for in the Legislative action of the two countries, and these consist of—

1st. Statutes, Canada, 1873, chapter 2, passed 14th June, 1872; section 2 of which provides for the admission into Canada, free of duty, of fish and fish oils, the produce of the fisheries of the United States.

At the time of the passing of this Act, the Province of British Columbia was a part of Canada, having been admitted 20th July, 1871; was represented in Parliament; and, therefore, there being no restriction in the Act, Canada was bound by it to admit into the ports of British Columbia United States' fish and fish oils.

2nd. Act of Congress, United States; approved 1st March, 1873. It is enacted that whenever the President of the United States shall receive satisfactory evidence that the Parliament of Canada has passed laws on its part to give full effect to Article XXI of the Treaty, "the President is to issue his Proclamation to that effect, and thereafter all fish oil and fish, the produce of Canada, shall be admitted into United States free of duty."

The President's Proclamation, as above required, was published July 1, 1873.

There being no restriction in the Act of Congress, it must be taken as applying to what at the time constituted Canada; and as British Columbia then formed a part of

Canada, the production of its fisheries in fish and fish oil are, entitled to admission into United States free of duty.

(Signed)

H. BERNARD,  
Deputy Minister of Justice.

I concur.

(Signed)

A. A. DORION,  
Minister of Justice.

No. 2.

*Mr. Herbert to Lord Tenterden.—(Received April 28.)*

Sir,

*Downing Street, April 27, 1875.*

WITH reference to Mr. Bourke's reply to a question asked by Sir A. Monck in the House of Commons on the 9th instant, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing a Report of a Committee of the Privy Council respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington under which fish and fish oil, &c., the produce of Canadian fisheries, are entitled to admission into the United States free of duty.

Lord Derby may probably think it desirable to take the opinion of the Law Officers of the Crown in regard to this matter, but before doing so, Lord Carnarvon thinks it may be well to await any observations which Sir. E. Thornton may have to offer on the subject.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 2.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, April 8, 1875.*

I HAVE the honour to forward, for your Lordship's information, a copy of a report of a Committee of my Privy Council, approved by myself, respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, &c., the product of Canadian fisheries, are entitled to admission into the United States free of duty.

In accordance with the request of the Privy Council I have transmitted a copy of this report to Sir E. Thornton, Her Majesty's Minister at Washington.

I have, &c.

(Signed) DUFFERIN.

Inclosure 2 in No. 2.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council, on the 1st day of April, 1875.*

[See Inclosure 2 in No. 1.]

Inclosure 3 in No. 2.

*Report by Minister of Justice of Canada, dated February 5, 1874.*

[See Inclosure 3 in No. 1.]

No. 3.

*Lord Tenterden to Mr. Herbert.*

Sir *Foreign Office, May 6, 1875.*  
 WITH reference to your letter of the 27th ultimo, forwarding a copy of a despatch from the Governor-General of Canada and a report of the Committee of the Privy Council of the Dominion, respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, &c., the produce of Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by Lord Derby to transmit to you, to be laid before Lord Carnarvon, a copy of a despatch from Sir E. Thornton on the subject;\* and I am to request you to point out to his Lordship that the United States' Act, giving effect to the provisions of the Treaty, was passed on the 1st of March, 1873, and that the report of the Canadian Department of Justice on the exclusion of the produce of the Columbian fisheries is dated the 5th of February, 1874, while the report of the Committee of the Privy Council of the Dominion was not made until the 1st ultimo.

Lord Derby is of opinion that before taking any steps in this matter it would be desirable to have some explanation of the delay which has occurred in bringing it to the notice of Her Majesty's Government.

I am, &c.  
 (Signed) TENTERDEN.

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No. 4.

*Mr. Malcolm to Lord Tenterden.—(Received May 7.)*

Sir, *Downing Street, May 7, 1875.*  
 WITH reference to my letter of the 27th of April, inclosing a copy of a despatch from the Governor-General of Canada, respecting a question as to the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, the produce of the Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a further despatch from Lord Dufferin, inclosing the reply of Sir Edward Thornton to the communication addressed to him on the subject by the Governor-General of the Dominion.

I am, &c.  
 (Signed) W. R. MALCOLM.

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Inclosure 1 in No. 4.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord, *Government House, Ottawa, April 19, 1875.*  
 IN my despatch of the 8th instant I had the honour of transmitting to your Lordship a copy of an Order of the Privy Council relative to the refusal of the United States Authorities to admit fish and fish-oil from British Columbia duty free, in accordance with Article XXI of the Treaty of Washington.

I had also the honour of informing you that, by the wish of my Government, I had communicated a copy of the report of Council to Her Majesty's Minister at Washington.

I now beg to inclose for your Lordship's information, a copy of the reply which I have received from Sir Edward Thornton upon the subject.

I have, &c.  
 (Signed) DUFFERIN.

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## Inclosure 2 in No. 4.

*Sir E. Thornton to the Earl of Dufferin.*

My Lord,

Washington, April 12, 1875.

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 8th instant, relative to the refusal of the United States' Authorities to admit fish and fish-oil from British Columbia duty free, in accordance with Article XXI of the Treaty of May 8th, 1871.

As British Columbia was not, at the time of the signing of that Treaty, a part of the Dominion of Canada, I do not feel justified in making a representation upon the subject to the United States' Government without instructions to that effect from the Earl of Derby. It would, however, appear that, although British Columbia may not be entitled to that privilege by the provisions of the Treaty, it is so with reference to the Act of Congress of March 1st, 1873.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 5.

*Mr. Malcolm to Lord Tenterden.—(Received May 14.)*

Sir,

Downing Street, May 13, 1875.

IN reply to your letter of the 6th instant, respecting the denial on the part of the United States' Authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington under which fish and fish-oil, &c., the produce of the Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to acquaint you, for the information of the Earl of Derby, that his Lordship has addressed an inquiry to the officer administering the Government of Canada, as to the delay in bringing forward this question in compliance with his Lordship's suggestion.

I am desired, however, to state that, notwithstanding any delay which may have taken place in bringing the matter forward, it would seem very desirable to have British Columbian produce included within the provisions of the Treaty, if this can be effected.

I am, &c.  
(Signed) W. R. MALCOLM.

## No. 6.

*Sir E. Thornton to the Earl of Derby.—(Received May 23.)*

My Lord,

Washington, May 10, 1875.

WITH reference to my despatch of the 12th ultimo, I have the honour to inclose copies of a further despatch, and of its inclosure which I have received from the Governor-General of Canada, relative to the refusal by the United States' Customs Authorities to admit fish and fish-oil free of duty into the United States from British Columbia, as the Canadian Government thinks that they ought to do, in accordance with the Article XXI of the Treaty of Washington.

The inclosure in Lord Dufferin's despatch which is a report of a Committee of the Privy Council of Canada of the 30th ultimo, contains a very clear statement of the case, but it seems to me that the question simply resolves itself into whether the United States' Government must be guided by the Treaty when British Columbia did not form a part of the Dominion of Canada, or by the Act of Congress of March 1, 1873 (*vide* revised Statutes, section 2,506) when it did form a part of the Dominion.

I am obliged, however, to acknowledge that I received no official announcement before the date of this Act, from the Governor-General of Canada, and made none to the Government of the United States, that British Columbia had been incorporated into the Dominion of Canada, nor am I aware that the fact has ever been officially communicated by Her Majesty's Government or by any British Authority to the United States' Government.



As I have already asked for your Lordship's instructions upon this matter in my despatch above mentioned, I do not consider that it will be expedient to make any representations to Mr. Fish, until I shall receive them.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 1 in No. 6.

*The Earl of Dufferin to Sir E. Thornton.*

Sir, Government House, Ottawa, May 3, 1875.

I HAVE the honour of communicating to you, for your information, a copy of a further order of the Privy Council of Canada, relative to the refusal of the United States' authorities to admit fish and fish oil from British Columbia duty free, in accordance with Article XXI. of the Treaty of Washington.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 6.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General, on the 30th day of April, 1875.*

THE Committee of Council have had under consideration the despatch of Her Majesty's Minister at Washington, dated 12th April, 1875, to your Excellency, in answer to a despatch inclosing the Minute of Council of the 1st April, 1875, relative to the refusal of the United States' authorities to admit fish and fish oil from British Columbia duty free, in accordance with Article XXI of the Treaty of Washington.

In his despatch Sir E. Thornton declines to make any representations on the subject to the United States' Government without instructions to that effect from the Earl of Derby, alleging that he would not be justified in doing so, as British Columbia was not, at the time of the signing of that Treaty, a part of Canada.

The Treaty bears date the 8th May, 1871, and Article XXXIII recites that Articles from XVIII to XXV inclusive, and Article XXX. shall take effect "as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and the Legislature of Prince Edward Island on the one hand, and by the Congress of the United States on the other."

British Columbia became part of the Dominion of Canada on the 20th July, 1871, and the Act of the Parliament of Canada giving effect to the Washington Treaty as respects Canada, was passed on the 14th June, 1872, British Columbia being then a part of the Dominion of Canada, and represented in Parliament.

The second section of that Act provided that "fish oil and fish of all kinds (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the United States shall be admitted into Canada free of duty."

It is clear that under this provision fish, the produce of the United States' fisheries, would be admitted free into British Columbia as forming part of Canada.

By section 2,506 of the Act of Congress, entitled "duties upon imports passed on the 1st of March, 1873," it is provided that,

"Whenever the Resident of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain, the Parliament of Canada, and the Legislature of Prince Edward Island have passed laws on their part to give full effect to the provisions of the Treaty between the United States and Great Britain, signed at the City of Washington on the 8th day of May, 1871, as contained in Articles XVIII to XXV inclusive, and Article XXX of the said Treaty, he is hereby authorized to issue his proclamation declaring that he has such evidence, and therefore from the date of such proclamation, and so long as the said Articles XVIII to XXV inclusive, and Article XXX of the said Treaty shall remain in force, according to the terms and conditions of Article XXXIII of the said Treaty, all fish oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the Dominion of Canada, or of Prince Edward Island, shall be admitted into the United States free of duty."

The President's Proclamation, issued on the 1st July, 1873, nearly two years after

British Columbia had become a part of the Dominion of Canada. From the language of the section above quoted it is clear that fish and fish-oil, the produce of the Dominion of Canada as then constituted, were to be admitted into the United States free of duty. In the opinion of the Committee it is susceptible of no other construction; and they do not hesitate to express the belief that when the subject shall be brought under the notice of the United States' Government that opinion will be concurred in.

The point under consideration was referred in February, 1874, to the Honourable A. A. Dorion, the present Chief Justice of Quebec, and then Minister of Justice, and his opinion was in accordance with that expressed in this Minute.

As an element in the consideration of this subject, it is worthy of note that the XXVIth Article of the Treaty providing for the free navigation of the River St. Lawrence also makes provision for the free navigation of one of the rivers of British Columbia, the Stikine, which flows through the territory of both countries. This evidence, taken in conjunction with the fact that provision is also made in the Treaty for Prince Edward Island and Newfoundland, the only other portions of British territory on the Continent; it may fairly be assumed that, apart from the effect of subsequent legislation, it was the intention of the framers of the Treaty to make it applicable to all parts of British America and the United States.

The Committee advise that a copy of this Minute, the Minute of the 1st of April, 1875, and the correspondence with Her Majesty's Minister at Washington, together with the opinion of the Honourable A. A. Dorion, be transmitted by your Excellency to the Imperial Government, with the request that the United States' Government be moved to consider the subject herein referred to, with a view to the removal of the grounds of complaint.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

Inclosure 3 in No. 6.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 1st April, 1875.*

[See Inclosure 2 in No. 1.]

Inclosure 4 in No. 6.

*Report by the Minister of Justice of Canada, dated February 5, 1874.*

[See Inclosure 3 in No. 1.]

No. 7.

*Mr. Lister to Mr. Malcolm.*

Sir, *Foreign Office, May 26, 1875.*  
WITH reference to your letter of the 13th instant I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington,\* in regard to the admission of fish and fish-oil, free of duty, into the United States from British Columbia.

I am, &c.  
(Signed) T. V. LISTER.

No. 8.

*Mr. Herbert to Lord Tenterden.—(Received May 29.)*

Sir, *Downing Street, May 28, 1875.*  
WITH reference to my letters of the 27th of April, and 7th and 13th instant, and to yours of the 6th of this month, respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in

\* No. 6.

those provisions of the Treaty of Washington under which fish and fish-oil, the produce of the Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of the Dominion, inclosing a further Report of a Committee of the Privy Council, urging that representations be made to the United States' Government, with a view to the removal of the grounds of complaint.

The question is one which requires, it is clear, careful consideration, but unless the Earl of Derby is advised that the contention of the Canadian Government is one to which it is impossible for the Imperial Government to be a party, Lord Carnarvon would suggest, for Lord Derby's consideration, whether Sir E. Thornton might not be instructed to make a communication, in the terms of the Report of the Privy Council of Canada, or the consideration of the United States Government.

In the event of Lord Derby being of opinion that this course may properly be taken, Lord Carnarvon thinks that it might be advisable that the representation should be made to the United States Government at once, and without waiting for the reply from the Canadian Government as to the delay which appears to have occurred in Canada in bringing the question forward.

His Lordship would be glad to be informed at Lord Derby's early convenience of the course which he would propose to take in the matter.

I am, &c.  
(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 8.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, May 1, 1875.*

WITH reference to my despatches of the 8th and 19th of April, on the subject of the refusal by the United States' authorities to admit fish and fish-oil from British Columbia duty free, in accordance with the Treaty of Washington, I have the honour to transmit herewith a copy of a further Report of Council, of which my Government urge that representations be made to the United States Government, with a view to the removal of the grounds of complaint.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 8.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council, on the 30th day of April, 1875.*

[See Inclosure 2 in No. 6.]

Inclosure 3 in No. 8.

*Report by Minister of Justice, dated February 5, 1874.*

[See Inclosure 3 in No. 1.]

Inclosure 4 in No. 8.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council, on the 1st April, 1875.*

[See Inclosure 2 in No. 1.]

## Inclosure 5 in No. 8.

*Sir E. Thornton to the Earl of Dufferin, April 12, 1875.*

[See Inclosure 2 in No. 2.]

## No. 9.

*Mr. Lister to Mr. Herbert.*

Sir, *Foreign Office, June 4, 1875.*  
 I HAVE laid before the Earl of Derby your letter of the 23rd ultimo, forwarding a further communication from the Canadian Government respecting the refusal of the United States' Customs authorities to admit free of duty fish and fish-oil the produce of British Columbia, and suggesting that Sir E. Thornton should at once be instructed to make a representation on the subject to the United States' Government, and I am directed by his Lordship to state to you in reply, for the information of the Earl of Carnarvon, that he has thought it desirable, before taking any other steps in the matter, to refer the papers to the Law Officers for their opinion.

I am, &c.  
 (Signed) T. V. LISTER.

## No. 10.

*Mr. Meade to Lord Tenterden.—(Received August 5.)*

Sir, *Downing Street, August 5, 1875.*  
 WITH reference to your letter of the 6th of May, to the reply from this office of the 13th of that month, and to subsequent correspondence respecting the denial of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, &c., the produce of the Canadian Fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to transmit to you for the information of the Earl of Derby, a copy of a despatch from the Administrator of the Government of Canada, with its inclosure, in explanation of the delay which occurred in bringing this question to the notice of Her Majesty's Government.

I am, &c.  
 (Signed) R. H. MEADE.

## Inclosure 1 in No. 10.

*Lieutenant-General Haly to the Earl of Carnarvon.*

My Lord, *Halifax, United States, July 5, 1875.*  
 WITH reference to your Lordship's despatch May 10th, relative to the exclusion of British Columbia by the United States Customs authorities from the benefit of importing fish and fish oil free of duty into the United States, under Article XXI of the Treaty of May 8th, 1871, in which your Lordship asked for some explanation of the delay, which was noticeable between the action complained of on the part of the United States, and the Report upon this action of the Canadian Department of Justice and of my Privy Council, I have now the honour to inclose, for your Lordship's information a minute of Council upon the question.

I have, &c.  
 (Signed) W. O'G. HALY.

## Inclosure 2 in No. 10.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Administrator of the Government, on the 25th day of June, 1875.*

THE Committee of Council have had under consideration the despatch of the Right Honourable the Earl of Carnarvon of 13th May last, covering copy of Sir Edward

Thornton's despatch of 12th April, addressed to the Right Honourable the Earl of Derby, relating to the refusal of the United States' Customs authorities to allow the importation, free of duty, of fish and fish oil from British Columbia, in accordance with the provisions of Article XXI of the Treaty of May 8th, 1871, also inclosing a copy of a despatch from the Foreign Office to the Colonial Office, dated 6th May, 1875, calling attention to the fact that, while the Act giving effect to the provisions of the Treaty was passed on the 1st March, 1873, and the Report of the Canadian Department of Justice on the subject is dated 5th February, 1874, the Report of the Committee of the Privy Council of the Dominion was not made until the 1st April, of which delay in taking action in the matter Lord Derby considers it desirable to have some explanation before bringing it to the notice of Her Majesty's Government.

The Honourable Mr. Scott, acting for the Minister of Customs, to whom the despatch with inclosures has been referred, reports that he is not aware of any special cause for the delay in question, but believes it to have arisen from the fact that the original complaint upon which the question arose was not succeeded by other complaints, and the matter was overlooked in the great press of other public business, but as the main point required is to obtain a clear and authoritative decision as to the right of British Columbia to participate in the provisions of the Treaty of Washington in the free admission into the United States of fish and fish-oil the produce of that Province, he recommends that this explanation be forwarded to the Earl of Carnarvon for transmission to the Foreign Office, with the desire that proper steps may be taken to establish the said rights of British Columbia.

The Committee concur in the above recommendation, and submit the same for your Excellency's approval.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

No. 11.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, August 11, 1875.*

I REFERRED to the Law Officers of the Crown your despatch of the 12th of April, together with other papers on the same subject, respecting the refusal of the United States' Customs authorities to allow the importation free of duty of fish and fish-oil from British Columbia in accordance with the provisions of Article XXI of the Treaty of Washington of May 8, 1871, and I am advised that the words "Dominion of Canada," in the XXIst Article of the Treaty in question must be governed by the state of things existing in May, 1871, and cannot now receive a wider construction from the fact that additional territory has since been added to the Dominion. The contention of the Canadian Privy Council, founded upon the XXVth Article of the Treaty of Washington, cannot be allowed, and no inference applicable in any way to the present case can be drawn from the provision that the navigation of certain specified rivers is to be free, but some confirmation of the view taken by the United States' Customs-house is given by Articles XVIII and XIX of the Treaty, which apply only to fisheries on the Eastern or Atlantic side of the Continent. Article XXIII provides the means by which the several articles named are to be carried into operation, but does not provide for extending the meaning or operation of those articles, and I am of opinion that the Act of Congress of the 1st of March, 1873, and the Act of the Parliament of Canada of the 14th June, 1872, must both be construed with reference to the "Dominion of Canada," as that Dominion was on the 8th of May, 1871, and under these circumstances I cannot instruct you to bring the matter to the notice of the United States' Government.

I am, &c.  
(Signed) DERBY.

## No. 12.

*Lord Tenterden to Mr. Meade.*

Sir,

*Foreign Office, August 11, 1875.*

I AM directed by the Earl of Derby to transmit to you, for the information of the Earl of Carnarvon, the accompanying copy of a despatch which has been addressed to Sir E. Thornton,\* on the subject of the refusal of the United States' Customs authorities to allow the importation, free of duty, of fish and fish-oil from British Columbia under the XXIst Article of the Treaty of Washington of May 8, 1871.

I am, &amp;c.

(Signed) TENTERDEN.

## No. 13.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, August 14, 1875*

I INCLOSE for your information copy of a letter from the Colonial Office on the subject of the importation into the United States, free of duty, of fish and fish-oil from British Columbia.†

I am, &amp;c.

(Signed) DERBY.

## No. 14.

*Mr. Herbert to Lord Tenterden.—(Received August 20.)*

(Extract)

*Downing Street, August 19, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 11th instant, inclosing a copy of a despatch addressed by the Earl of Derby to Sir Edward Thornton on the subject of the refusal of the United States Customs authorities to allow the importation, free of duty, of fish and fish-oil from British Columbia, the XXIst Article of the Treaty of Washington.

Lord Carnarvon has communicated to the officer administering the Government of Canada the substance of the Report of the Law Officers on this question in a despatch of which a copy is inclosed.

## Inclosure in No. 14.

*The Earl of Carnarvon to the Officer Administering the Government of Canada.*

Sir,

*Downing Street, August 12, 1875.*

HER Majesty's Government have been in communication with the Law Officers of the Crown on the subject of your despatch of the 1st of May last, inclosing a Report of the Privy Council on the subject of the refusal of the United States Customs authorities to allow the importation, free of duty, of fish and fish-oil from British Columbia, under the XXIst Article of the Treaty of Washington, and they are advised that the words "Dominion of Canada" in the Treaty of Washington, Article XXI, must be governed by the state of things existing in May, 1871, and cannot now receive a wider construction, from the fact that additional territory has since been added to the Dominion.

2. Her Majesty's Government have been further advised that it would not be possible to uphold the argument contained in the Report of the Committee of Privy Council of the 30th of April, 1875, upon the XXVth Article of the Treaty of Washington, and they fear that no inference applicable in any way to the present case, can be drawn from the provision that the navigation of certain specified rivers is to be free.

3. On the other hand it would appear that some confirmation of the view taken by the United States' Customs-house may be deemed to be given by Articles XVIII and

\* No. 11.

† No. 10.

XIX of the Treaty, which apply only to fisheries on the Eastern or Atlantic side of the Continent.

4. The Article XXXIII provides the means by which the several Articles named are to be carried into operation, but does not provide for extending the meaning or operation of these Articles, and Her Majesty's Government are advised that the Act of Congress of the 1st March, 1873, and the Act of the Parliament of Canada of the 14th of June, 1872, must both be construed with reference to the "Dominion of Canada," as that Dominion was on the 8th of May, 1871.

5. I regret very much that for these reasons it has not appeared possible to instruct Sir E. Thornton to bring the matter before the United States' Government as proposed by the Dominion Government.

I have, &c.  
(Signed) CARNARVON.

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NORTH AMERICA. No. 5 (1876).

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CORRESPONDENCE respecting the Non-Admission  
of Fish and Fish Oils, the produce of British  
Columbia, into the United States, Free of Duty,  
under the Treaty of Washington, May 8, 1871.

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*Presented to both Houses of Parliament by Com-  
mand of Her Majesty. 1876.*

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