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SCIENCE AND INTERNATIONAL TRADE

JOHN GARVEY*

I'm the official greeter—the Joe Louis—of this event, and I want to extend a welcome and thanks with increasing degrees of warmth to three different groups. Welcome first of all to you in the audience who have found what we are doing here today sufficiently interesting to give us your time and attention.

Thanks next to the speakers who [have made] this program attractive to you. They come from various academic institutions (BC, Suffolk, Harvard, Duke, Tufts, U. Mass, Texas, and Hofstra); from public and private firms; centers, and institutes; and from the United States and abroad.

Thanks last and most of all to David Wirth and Jeffery Atik, who have conceived [of] this conference and brought it into being. David teaches with me at Boston College Law School. Jeffery teaches here at Suffolk University Law School. Cooperation between our institutions runs deep. Jeffery's dean is my old colleague Bob Smith, who once taught at BC.

This is a fabulous idea for a conference, because its solution requires the cooperation of such a variety of people. I myself am learned in neither science nor international trade. I teach American constitutional law. And yet I can see from my own perch how hard this problem is. The American states, in forming the American union, spent most of the 19th century knocking down one another's barriers to trade. We moved to a system where the rule of thumb is "no discrimination"—treat imports (let us say) like things made at home. This has led to the world's most robust economy, and that is a good thing.

It's not our only aim in life. People also object to the importation of unpasteurized milk, the burial of other folks' garbage, the indiscriminate capture of fish and wildlife, the shipment of plutonium through their own towns, etc. Food safety, disease control, consumer product safety, and environmental integrity are all good things too. We generally leave it to the individual states to decide how much of those things they want, at the expense of a robust economy. Once again the rule of thumb is "no discrimination"—it's OK to regulate

* This text is based upon Dean John Garvey's opening remarks.

landfills and milk, so long as the rules are the same for domestic and foreign actors.

There are two problems with this system:

- Sometimes the burden of an even-handed rule falls more heavily on foreign actors. (Imagine an Indiana tax on the sale of coal.)
- Sometimes the rule rests on bad or fake science. (Imagine a Florida rule forbidding the sale of Hass avacados (80% of California avacados are the Hass variety) because—it is said—they cause stomach ulcers.)

This is where the scientists come in . . . and a host of related but non-scientific problems:

- Whether Hass avacados cause stomach ulcers is a question we need expert help to answer.
- Who should answer this question? A judge? A panel of judges? An expert? A panel of them? And who vets the experts?
- How close must the connection be between avacados and ulcers? (How big a risk are we willing to run?) This is an issue of trade policy, not science. In the international arena we have a different institutional apparatus for deciding it. There is no Congress sitting above the states.

I don't mean to suggest that the problems and the solutions are entirely alike. Only that they are familiar and difficult. I look forward to hearing how to solve them on a global scale.