INTERVIEWS

Oregon's Future is proud to present the following interviews with four of Oregon's Congressmen.

Senator Gordon H. Smith,

Serves on five major Senate committees: Commerce, Science, and Transportation, Energy and Natural Resources, Rules, Indian Affairs, and the powerful Finance Committee.

Representative Earl Blumenauer,

Oregon Third District

Serves on the Transportation and Infrastructure Committee and as a member of the International Relations Committee.

Representative Greg Walden,

Oregon Second District

District includes the 20 counties of southern, central and eastern Oregon. Only Republican Representative from Oregon.

Representative David Wu,

Oregon First District

Serves on the Committee on Science, Subcommittee on Energy, and Subcommittee on Space and Aeronautics. Only Chinese-American member of the US House of Representatives.

Senator Gordon H. Smith

Responds to Karen Goddin's Questions
(March 2003)

Q: *What do you think are the most positive aspects of current trade agreements, especially the WTO and NAFTA?*

Smith: I think the best thing that Congress has done is to finally grant the President fast track authority also called trade promotion authority. I have always been a strong supporter of a level and fair field for trade. Congress actually hampered free trade without granting fast track for years. I believe the chances for free trade agreements this year are made possible because last year we granted the president this authority.

It's important for the US to pursue all free trade agreements—Chile, Singapore—this year are solid bilateral trade agreements that are good steps in moving towards an eventual Hemisphere Trade Agreement. Free trade means free trade—removing boundaries and barriers that deter the global economy.

Q: *What are the negatives, and how would you suggest addressing them?*

Smith: The obvious downside to trade agreements is that you become more open to more disputes—we need a better way to figure out disputes than what we currently have.

It is a tough year for trade—we are facing sanctions from the European Union and we have to find a fair way to replace the Foreign Sales Corporation issue (FSC). But we need to find a way to strengthen the dispute settlement process so that the whole process doesn't get out of hand.

Q: *What role should Congress play in the negotiations and ratification of trade agreements? In other words, if you could draft authorizing legislation for the Executive Branch what would it look like?*

Smith: There is definitely a role for Congress to play. USTR Bob Zoellick was on the Hill recently in Finance Committee testifying that we in Congress need to draft legislation to avoid WTO retaliation. But Congress is divided on how to go about this difficult process.

It is absolutely important to remember now more than ever that there is a broader relationship we need to keep

intact right now with Europe and we need to step up to the plate and we need to keep that relationship working.

We are making some progress. Finance has an excellent working group led by Sens. Hatch and Grassley. The latest sanctions list from the WTO contains about 2,800 products that could be subject to sanctions. That is better than a list from last year that number 2,800 products. We must continue to work together to resolve these disputes.

Q: *Do you think it is appropriate or even possible to protect those sectors of the Oregon economy that are negatively impacted by global trade? For example, fruit and berry farmers, displaced workers, etc.*

Smith: I have worked hard to ensure greater access for some very important agricultural markets in Oregon. Specifically, we can improve trade with the Market Access Program (MAP), funding for which Congress raised dramatically in the Farm Bill.

Additionally, the federal government needs to be responsive to surpluses during market slumps. In the Farm Bill, we raised the mandatory USDA purchase of specialty crops (fruits and veg.) to $200 million annually. Our pear industry needs to be protected from below-market price imports of canned pears from South Africa, which is currently given tariff-free entrance to our domestic market under the African Growth and Opportunity Act (AGOA). AGOA was never intended to allow such access to harm the domestic industry, and we are working with the Administration to review that treatment.

The lumber industry is being harmed by subsidized and dumped Canadian lumber. We are encouraging the Administration to reach an acceptable agreement with Canada as soon as possible that protects the domestic industry from distorted lumber prices and unfair competition.

Q: *What impact do you think global trade has on local sustainable development policies? On local environmental goals and policies? Is there a way to protect the environment while growing the global economy? Do you think the environmental and labor side agreements in NAFTA are helpful, headed in the right direction or the wrong direction?*

Smith: Free trade enables the residents of our trading partners access to products, food, and fiber that may not be able to be produced locally, and can help preserve the environment of our trading partners by relieving the pressure to produce all needed goods locally.

We all want to provide for sustainability on a global level, and we need to use technology and trading in technology to improve our environmental stewardship.

With respect to sustainability, I am actually concerned that as the United States continues its "not in my back yard" attitude toward basic resource industries such as timber, we are pushing more environmental impacts into nations that have few environmental protections.

Senator Smith's foray into politics began in 1992, when he was elected to the Oregon State Senate. His colleagues recognized his leadership abilities by electing him Minority Leader, and then President of the State Senate during his first term in office. Upon his election to the United States Senate, Smith became the first U.S. Senator from eastern Oregon since 1938. Born in Pendleton, Oregon, Gordon Smith Graduated from Brigham Young University in 1976, and earned a law degree from Southwestern University in 1979. After working as an attorney in private practice, Smith assumed management of his family's frozen vegetable processing company, a position he held until his election to the U.S. Senate.

Intellectual Property Rights

Intellectual property rights (IPR) cover the many systems that reward individuals or companies by protecting their intellectual creations. Patents, copyrights, trademarks, and trade secrets are the most common forms of IPR. Each has its own rules and laws that cover how they are obtained, how they can be exploited, and how long they will last.

In the United States, IPR, in the form of patents and copyrights, goes back to the U. S. Constitution, Article 1, Section 8, which grants to Congress the powers "[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." The "writings" are protected by copyright, and the "discoveries" are protected by patents. The founders recognized that if individuals were rewarded for their investment in advancing the science and the arts, the country as a whole would benefit. The public would be free to use the intellectual property after the expiration of the "limited times."

IPR laws in the United States have evolved over time in an attempt to keep up with changes in technology. Congress has also extended the length of protection for copyrights to 75 years, and recently increased the

protection of patents to 20 years from the date of filing. In addition, with the invention of semiconductors, a new type of IP was developed to cover "topographies" or circuit layouts. This was intended to protect the millions of dollars of investment in semiconductors that could be easily copied by others once a new semiconductor product was put on the market.

Each country has its own laws respecting the types of things that can be protected under IPR, how the rights are obtained, and how long the protection will last. In this country a patent may be granted for any "new," "useful," and "non-obvious" invention or discovery. The patent grant gives the patent owner the right to prevent others from making, using, selling, offering for sale, or—in terms of its impact on international trade—importing into the country any product that would infringe on the patent.

Those who do any of these things in the United States without a "license" from the patent owner are "infringers." The patent owner may bring a lawsuit in a federal court to stop the infringing action and to collect damages for the unauthorized use. Once the patent expires it is "in the public domain." However, in any country in which the inventor has not been granted a patent,

Continued on next page.

Representative Earl Blumenauer

Interviewed by Michael Harter (graduate student, Portland State University) and Barbara Dudley (October 2003).

Q: *What do you think are the most positive aspects of foreign trade agreements, such as the WTO?*

Blumenauer: The advantage of the structure, for me, first and foremost, is that there is a structure. The United States had been one of the drivers of the post-World War II era effort to rationalize trade policy and relations. Having this framework is an extraordinary advance amid a free-for-all, and there is now the potential to use that structure for less developed countries. To this point, that's been more of a promise than something that has been actually realized, but I see the framework as a mechanism for us to change some conditions that I think are really oppressive for poorer countries, particularly regarding agriculture.

Q: *What do you think are some of the negatives of trade policy and how would you address them?*

Blumenauer: Part of the problem is that countries continue to have it both ways. They want the advantage of keeping policies that work for them. As a result, we have seen some pressures put on developing countries that have been harsher or more draconian than what the United States or Great Britain themselves followed in their development. They implemented policies that, if not less wrenching, were less disruptive politically. This has continued with countries like Japan and Korea that, in the post-World War II and post-Korean War periods, implemented aggressive government protectionist policies, until they stabilized and got their freedom back.

When it comes to agricultural policies, the European Union and Japan are even greater offenders than the United States, and our policies are pretty egregious. For example, we force poor Mexican farmers to compete with our heavily subsidized corn and cotton. We've seen that these international regimes are a little tighter than the trade policies developed countries themselves practiced in their comparable development periods. We continue to have really hypocritical policies, particularly here in the United States. *(See Sophia Murphy's article and its accompanying sidebars.—ed)*

Q: *The United States has just cobbled together a new proposal in agriculture that seems to be more of the same: a slow phasing out of domestic subsidies… Given the realities in the Senate, do you think there's any chance that we are going to take a better position on agricultural negotiations than we have?*

Blumenauer: My experience with US Trade Representative Robert Zoellick is that he is a smart person who cares about trade. I think he's been overruled by the politicos within the administration who have made a hash out of our trade policy. For example, with recent cases involving steel, citrus, and textiles, those decisions were bad trade policy. *[In each of these cases the Bush Administration recently raised tariffs or continued other protectionist measures—Barbara Dudley]*. They are also bad foreign policy. For example, we have taken punitive trade actions against poor countries whose support we are trying to mobilize. Doing something on textiles would have made a huge difference to Pakistan.

Q: *And we promised Pakistan an opening for textile imports, didn't we?*

Blumenauer: I think it was implied. I don't know how far the conversations went, but that's what some people were working toward. Zoellick, I believe, knows that some of our current policies are not the right way to

go. If we don't start making some adjustments, it's going to be hard for us internationally. There are problems pending with many countries, such as Brazil and Japan. It is actually easier to do the right thing than to keep compounding all the political and economic fixes to try to arrive at a policy that makes sense.

The other factor that makes a difference is that we are seeing a convergence of humanitarian policy and sound politics in this country. During the last consideration of the Farm Bill in the House, we came very close to making some adjustments to our commodities programs, shifting funding away from subsidies for 13 commodities that are in surplus and toward conservation and environmental protection.

The current Farm Bill is going to cost upwards of $200 billion or more depending on the level of ultimate price supports. The funding is concentrated in the form of subsidies for 13 commodities. Six states get half the benefits and the vast majority of the subsidies go to the top 10 percent of producers in terms of wealth and production size. As a result, the subsidies are skewed against most of the farmers in most of the states. It's extraordinarily expensive and it's bad trade policy.

With regard to U.S. agricultural policy, it's hard to imagine a set of circumstances that would be more disadvantageous for us, politically. The chair of the Senate Agriculture Committee is up for re-election and six of the most competitive Senate races are in states that profit tremendously out of the way we do things now. The chair of the House Agriculture Committee and the committee's ranking minority party member are from the same state, from adjacent districts, with identical interests that are contrary to those of the majority of the House—let alone of the country. It's hard to imagine the alignment being worse. Notwithstanding that, we came close in the House to reforming agricultural policy. We had a majority in the House that favored lowering the payment level for instance. We are building a very strong national coalition of interest groups, including environmental groups, the majority of states' agricultural interests, people who care about the ballooning deficit, fiscal conservatives, and people who are concerned about food programs.

Q: *Does Zoellick deal directly with Congress or is he two steps removed on agricultural policy?*

Blumenauer: Zoellick and his predecessor, Charlene Barshefski [U.S. Trade Representative under the Clinton Administration] have spent time with Congress on sub-issues, on the dynamics of trade, in conversation, trying to get momentum for the approval of individual trade agreements. So, there is some ongoing relationship, which I anticipate will continue. If they are smart they will continue. No one accuses Zoellick of being stupid, but it's a question of how much latitude he has.

Q: *Is it your impression that President Bush is paying attention to trade issues?*

Blumenauer: I think Bush pays attention to trade issues. I think his attention is exclusively political. He does not have a great depth of knowledge on these issues, in my limited experience with him. If you look at what the administration has done on trade, there is no intellectual framework. It's all politically driven.

Whether or not Zoellick talks to Karl Rove, I think Karl Rove calls the shots in this administration. At least between now and the next election, the administration will be looking at trade policies through a political framework.

People want to defile former President Bill Clinton and claim that he was a politically expedient person, but Bill Clinton would never have done what Bush did on steel [raising tariffs], even though it would have won Al Gore the presidency. Clinton would have never made those moves. It's such terrible poli-

Continued from previous page.

the public is free to make, use and sell products that use the invention.

This right to exclude others from making money from your invention is intended to encourage the disclosure of new discoveries. It is hoped that by making the discoveries public by published patents, others will seek even better ways to accomplish the same or even better results without infringing the patent. This may lead to new patents and to advances in many areas that are important to our quality of life, such as communications, medicines, entertainment, software, and computers.

Some argue that nothing should be patented, that all things, especially medicines, should be free for all to make, use, sell, and import as cheaply as possible. In considering this one has to ask whether or not, for example, drug companies would have bothered to develop drugs to combat HIV, if there was no patent system that rewarded them for the large investment required to develop, test, and market new drugs. It would be interesting to study how many new drugs or medicines have been developed by those who believe in the patent system versus those who do not.

It is clear that as a country becomes industrialized, it tends to favor the creation and pro-

tection of IPR. On the other hand, where a country is not a net creator of IP, it tends to disfavor IPR. The Word Trade Organization (WTO) has attempted to address the conflict over IPR with international agreements. The Trade-Related Aspects of IP Rights (TRIPS) agreement addresses how countries should provide for IPRs, how the rights should be enforced, and how to settle disputes between countries regarding IPRs.

A key aspect of TRIPS is that of non-discrimination. A country that joins WTO must have IPR laws in place, and those laws must treat both citizens and foreigners the same way and must provide equal treatment for nationals of all WTO members.

The IP covered by TRIPS include:

- patents: patent protection must be available for both products and processes, in almost all fields of technology, for at least 20 years;
- copyright and related rights;
- trademarks, including service marks;
- layout-designs (topographies) of integrated circuits; and
- undisclosed information, including trade secrets.

Having IP rights is not enough, however. A person or company

Continued on next page.

Continued from previous page.

cy. Clinton knew it and did not get sucked in to it.

Q: *What role should Congress play in negotiating trade agreements?*

Blumenauer: I hope Congress has almost no role to play, because 535 additional trade representatives will not help the process and will not depoliticize it. It is fair for Congress to be engaged in asking tough questions. I have no problem with an up or down vote on trade agreements under the Trade Promotion Authority. I would have preferred that the grant of that authority clarified various ambiguities. For example, regarding the operation of Chapter 11 *(of NAFTA, which permits foreign investors to appeal laws and rulings they think constitute non-tariff barriers to trade—ed)*, and making sure that both foreign and domestic companies are on the same footing, and no one has the opportunity to undercut American environmental protections, because of or under the guise of, investor protections. We ought to be able to clarify that. That is an appropriate thing for Congress to examine and express opinions about.

Congress should reach out to the administration, and hope that any administration would in turn reciprocate, to identify issues already on the table in the latter stages of the negotiation process, to ask questions and identify potential problems. This would increase the likelihood of actually resolving these issues without having to defeat the entire agreement. Congress ought not to be afraid to vote some of these issues down. I don't think Congress should weigh in on every proposal, or an agreement would never happen because everybody would focus on a single item. Apparently, we have to accept them all or reject them. I think that is an appropriate procedure in order to ratify trade agreements, but it is also appropriate to turn them down if they don't meet the threshold.

Q: *Is it possible to provide any protections for sectors of the economy that are suffering economically as a result of global trade?*

Blumenauer: We need to find a way to capture some of the benefits of international trade, and retain a portion of that benefit to deal with people who are suffering as a result of trade policies. It is entirely appropriate to establish a form of wage subsidy for people who have suffered displacement.

For Oregon, if we were to rationalize broad sectors of our trade, especially our agriculture, we would have a net benefit flowing within the state. Oregon gets a pittance compared to other states in agriculture subsidies. We could do things to help berry farmers and fruit tree growers comply with environmental protections and be able to preserve their farms that would be the equivalent of putting money in their pockets.

I also think that the federal government, in its economic development and agricultural policies, ought to be doing more to promote both consumer education and consumer choices. The best example of that is the local farmers' market. We should provide support for farmers' markets around the country because they are a place for local farmers to sell their products. They get a far better return selling locally and it has all sorts of community benefits. It wouldn't cost the federal government a huge amount of money, but it would help consumers get better quality and provide more income to the farmers. I think people would actually pay a little more to have a fun experience shopping for local berries than purchasing produce in the supermarket that comes from Chile.

Q: *In terms of the agricultural policy as it's incorporated in the trade agreements, do you think that we could separate the commodities from the produce in some way? It seems to me that the set of realities with large transshipments of grains, for example, is quite different from the imports of Chilean berries. The universality of the agriculture rules seem to be self-defeating.*

For example, could we have import controls on produce, vegetables, or fruits and berries because it is a different kind of product than grain products?

Blumenauer: We can make those distinctions and make an argument, but it's a bit tenuous. It's not the best policy in the long run. In part, if we truly deal with the market, if we stop the grotesque subsidization of such things as soybeans, cotton, sugar, and peanuts, it has a ripple effect. It also has implications on stewardship of the land. We paid a horrible price as a result of the monoculture in Iowa, for example, with corn. We have an area twice the size of the state of New York where people in the last couple of years have averaged a loss of about a dollar per bushel but they are still overproducing, because they can sell it and the government picks up the tab for the difference. *(See Tony Rufalo's sidebar "Fair Prices Are Not Subsidized", attached to Sophia Murphy's piece on the Farm Bill.—ed)* We are also killing waterways. In Florida, we are subsidizing people to grow sugar cane that is polluting the Everglades and then paying millions of dollars for clean up, and we have so much sugar that we are paying millions of dollars to store it. In addition, consumers are paying two or three times the market price for sugar, so it's driving confectionary enterprises out of the United States. It's just a spiral.

I do think that rationalizing the pricing, the market, and what government does to assist the farmers and the consumers has great long-term benefit and you don't have to get into these distinctions that are problematic under trade rules and are going to cut against us as much as we will benefit. For example, the Japanese are now telling us that our rice isn't compatible with their digestive systems. I think we are all better off, if we get away from some of those distinctions.

I have no problem with letting people know what they are buying, where it comes from, and giving consumers the choice. I'd rather pay for what we want—like protections for the environment—rather than manipulating the system.

Q: *Intellectual property is out of place in trade agreements and deserves more attention from Congress than it's going to get in a "take it or leave it," up or down vote on trade. Do you think it belongs there, and, if so, does Congress ever talk about it when it is debating trade agreements?*

Blumenauer: The protection of intellectual policy has been much debated. I don't know whether it is misplaced. People have wondered whether it is more zealously protected than other areas people thought were worthy. We are looking at a situation where the hyper-aggressive protection of intellectual property could have negative effects on people in poor countries, in obtaining medicines for instance, or just by driving other countries to circumvent the provisions. I think everyone would benefit from more thoughtful analysis and flexibility dealing with intellectual property. It is today a legitimate area that needs to be a part of trade negotiations. It represents so much value, particularly for a region like ours, that we have a lot at stake. Moreover, it's unrealistic to think that we could have the type of world trade that we are interested in, without being clear about how intellectual property will be protected. There are problems which need to be solved, but I don't think we have tested the limits of our ingenuity in dealing with them yet. *(See Sean Fitzgerald's sidebar "Intellectual Property".—ed)*

Q: *Is it possible to protect the environment in a growing global economy?*

Blumenauer: I think we have no choice. Yes, it's possible. We've got to encourage large developing countries not to follow the patterns of development that the United States and Great Britain followed. We talked

must be able to enforce their IPRs in order for them to be of any value. First newly industrialized countries must enact IPR laws and establish a system to enforce them. Then they must train people to understand IPRs and to properly verify that they should be granted. Finally, they must train judges and administrators to determine when patents have been infringed. China is a good example of a country that, in order to join the WTO, has implemented IPRs and is developing a system to enforce them (see, for example, www.citicip-usa.com to view the current IPRs in China). Remember that we have been working on the patent system in the United States for more than 200 years.

Sean P Fitzgerald, Attorney
Ater Wynne LLP

Sean Fitzgerald is a registered patent attorney with an undergraduate degree in electrical engineering. He has been involved in most areas of intellectual property law, including licensing patents in the United States, Europe and Asia. He is the co-chair of the Intellectual Property and Trade Transactions Group at Ater Wynne LLP, a law firm in Portland, Oregon.

Another View of Intellectual Property Rights

Sean Fitzgerald's dismissal of the possibility of altruistic motives behind scientific research may ring true in twenty-first century America, but would have seemed cynical and hollow to the likes of Jonah Salk, head of the Virus Research Lab at the University of Pittsburgh, who developed the first polio vaccine. Salk and Albert Sabin, of the Cincinnati Children's Hospital, gave the world the polio vaccine, acquiring fame, coveted awards and gratitude, but not riches for their discovery. As a result of the immediate, widespread and inexpensive availability of the vaccines, the deadly, disabling virus was brought under control quickly.

It is only in the last quarter of a century that pharmaceutical companies have taken over the field of medical research formerly dominated by universities and nonprofit institutes, and the profit motive has begun to drive scientific and medical research. To quote Frederick Gates, the founding director of the Rockefeller Institute for Medical Research, in what must now seem quaint sentiments to patent lawyers and pharmaceutical companies, "The values of research are universal values… Who has not felt the throbbing of desire to be useful to the whole wide world?" (Gates,

Continued on next page.

earlier about how we were rather protectionist in view of developing our industries. Another characteristic of development in industrialized countries is that they grotesquely destroyed the environment. We can't afford more of that. That was damaging enough. As we live with global climate change we are starting to see some evidence of that. If China and India followed the same pattern of development as the United States, we would be severely depleted in terms of resources. The air and water quality will be severely compromised, and we would all be losers.

I think it is irresponsible of the United States to refuse to either ratify the Kyoto protocol or advance its alternative in a way that engages people. It is irresponsible of us, as the largest polluter in the world, and the wealthiest country, not to lead by example. But we are not leading by example. If the United States starts to practice what we preach, develops an energy policy, gets aggressive about global climate change, and works not just with international organizations but also with international business to promote better practices, I think we can reach substantial agreement on environmental protection, while we help people raise their standards of living.

Compliance with sustainable development and better environmental practices is a major source of what a good business opportunity can be, particularly right here in Oregon.

Q: *Should environmental side agreements be incorporated into the treaty or should environmental issues be negotiated separately?*

Blumenauer: My preference is to integrate and incorporate the side agreements because they have economic implications and they make a difference in terms of trade practices, and it's easier to deal with the chaos if they are part of the agreements.

Congressman Earl Blumenauer has devoted his entire career to public service. First elected to the Oregon Legislature in 1972, he served in the Oregon House of Representatives. From there Mr. Blumenauer went on to be a Multnomah County Commissioner and spent ten years on the Portland City Council as Commissioner of Public Works. In each of his elected positions, Mr. Blumenauer's reforms and innovative accomplishments have helped his hometown of Portland, Oregon gain an international reputation as a livable community.

Representative Greg Walden

Interviewed by Karen Goddin (March 2003)

Q: *Congressman, what do you think are the most positive aspects of current trade agreements, especially the WTO and NAFTA?*

Walden: With the WTO, you get a framework that allows for a multilateral approach to trade and that is especially important when you are dealing with issues of sanitary and phytosanitary standards, making sure the decisions are based on scientific evidence. It's important when you try to make sure that other nations with whom you have reached agreements actually abide by those agreements and don't try to wiggle out of them. It's important because it gives an international framework for resolving these disputes. We haven't always done as well as we'd like there. Sometimes we do well, sometimes we don't—but without it you would have one nation facing up against another. China is a perfect example. With China in the WTO they are either going to make an enormous reform effort in that country or they are going to be in violation of the WTO. One of the two. Here we have opened our markets to enormous amounts of Chinese trade. They are already here. The whole debate about PNTR [permanent normalized trade relations] accession to the WTO was really about getting China's market to open to us and to get China to live by international law as it relates to

trade. So, they have got to deal with their state-owned enterprises, they have got to deal with currency issues—there's a whole long list of things that China will have to deal with. I think that also applies elsewhere. Now, as far a NAFTA goes, it has had its good sides and its down sides, depending upon what community group or industry you are in. There have been real winners and real losers. You see in it every sector of the economy.

The same holds true for many agricultural producers. But I think you have seen some successes, certainly: producers of pears, wheat, and potatoes have all more than doubled exports into Mexico. Pears, for example, represents 36 percent of the fresh market and 70 percent overall, so getting into Mexico via NAFTA has been really important. You are also seeing a reduction in tariffs—which is a whole other issue we need to get into at some point. The playing field is not level yet.

Q: *Could you identify some of the negative aspects of trade agreements and do you have any suggestions on how they could be addressed?*

Walden: Well, in the past, I think we entered into some agreements that dealt with other sectors of the economy and not agriculture—and sometimes the farm economy in America and Oregon took a back seat. The deals were cut for financial services or manufacturing and in a number of countries the most difficult area in which to reach agreement is agriculture, because in developing countries that's about all they have. So, in some cases at least, the feeling is that agriculture has really taken some hard knocks. We have been going through a period in which we have opened our markets. We have dropped our tariffs. We have virtually no sanitary or phytosanitary barriers. We actually live by the science and play fair. Yet our producers often times are facing tariffs that are five times what their competitors face. You have a 60 percent tariff on average overseas, 12 percent here. You run in to all these sanitary and phytosanitary issues, we converted non-tariff barriers to tariffs and, as we work in the Doha round of negotiation to reduce those, we are beginning to see, again, the emergence of some non-tariff barriers. We have to be very aggressive at the United States Trade Representative (USTR) level and all the way up to the President to make sure that we are not selling out our own producers, especially on the agricultural side.

Q: *What is the role of Congress in the negotiations and the ratification of trade agreements? You mentioned being diligent with the USTR during the negotiations. Is that what you think the role of Congress should be?*

Walden: Well, Congress has a role in these trade discussions. I think, though, that for too long Congress tried to play the role of the trade representative. All 535 of us thought we should be able to individually negotiate or renegotiate whatever deal the administration had reached. That's why passage of Trade Promotion Authority *(TPA, also know as Fast Track Authority—Ed.)* was so critical. We are getting out-negotiated around the globe: countries bilaterally negotiated 130 agreements and we were party to only four. Countries did not want to negotiate with us because they feared that Congress would try to remake the deal—and who wants to enter into a long negotiation when they think somebody's just going to change what you've agreed to? So, the framework set up under TPA is valid when it calls on the President to notify Congress within 90 days of the start of negotiations. The President and the administration have to come to Congress—to the relevant committees, specifically Agriculture, Ways and Means, and the other relevant congressional oversight committees—to look at what is involved in our tax

Continued from previous page.

1911, Address on the Tenth Anniversary of the Rockefeller Institute.)

When pharmaceutical companies argue that they must charge 100 or more times the actual cost of producing life-saving drugs in order to recoup their research costs (and reap record-breaking profits), they are not taking into account the contributions of the public to that research, through grants from the National Institutes of Health, public underwriting of universities and research labs, and even the public education system that produces the minds that do the research. Human invention and discovery is not the work of a single extraordinary mind but the result of insights and knowledge built upon generation after generation.

At the WTO Ministerial Meeting in Doha, Qatar, (November 2001) in response to an uproar from developing countries and health-related nongovernmental organizations, the United States moved from its position of insisting on full patent protection for all pharmaceuticals and conceded that in the case of health emergencies, countries would be free to produce generic versions of life-saving drugs. Since then, however, the United States has hardened its stance and has blocked resolution of the thornier question of whether

poor countries without the capacity to manufacture generic drugs could import them. As Mamphela Ramphele and Nicholas Stern, the managing director and chief economist of the World Bank, argued in a March 1, 2003 editorial in the New York Times, "Allowing these very poor countries to import generics would hardly erode incentives for Western conglomerates. These poor states form only a tiny portion—likely less than 1 percent—of the global pharmaceuticals market. …Ensuring continued legal access to generics for the poorest countries is vital to improving their health care systems, and the lack of an agreement is becoming a serious impediment to the success of the broader trade talks."

Perhaps even more offensive to poor countries suffering from devastating epidemics than the denial of access to life-saving drugs, is the dismissal of their own contribution to medical knowledge. As pharmaceutical companies roam the world looking for botanical remedies for human disease, they are not "inventing" genetic resources, but rather mapping those which have been identified by many generations of native healers.

Barbara Dudley, guest forum editor

law, what is involved in other laws, and what we might need to change. So we get input at the front end and we participate along the way, but we do not come at the end when a deal has been reached and try to renegotiate the deal. *(See Jim Bailey's article, "Myths about the WTO".—Ed.)* I think that is a preferable method of negotiating. In business, when you negotiate a labor contract, you cannot take it back to every individual member of the board and each individual worker and say, OK, now you rip apart the agreement and come up with what you want. Nobody would sit down at the bargaining table.

Q: *Regarding structural changes taking place in global economies, is there any way to appropriately protect sectors of the Oregon economy?*

Walden: Well I think it can be appropriate. We certainly have the right under law to put in place safeguards for import-sensitive commodities and for import-sensitive producers. We do not want to just open our markets and just totally decimate anybody that is producing anything here. That is not what trade is about. There are certainly procedures to do that, to provide more realistic levels so that we can sustain a base manufacturing and so that the United States can sustain a base for agriculture that can be vibrant and healthy. We have to be smart about these agreements. That is the first thing. Then we also have the ability with the TPA for trade adjustment assistance for various industries and for producers. That is sometimes a complicated process. It may not totally compensate people for what they face prior to some of these agreements, but it is a form of assistance to help those who one way or the other are going to be affected by trade. *(See Scott Goddin's sidebar to Tim Nesbitt's article—Ed.)* We're not going to close the door on trade. We would all go belly up if we did. We are not going to be an isolationist country; that has not worked, we tried that. So, what we have to do is make sure the agreements are as fair as possible, that other countries are responding to our demands for lower tariffs and greater access, and that's where it really has to happen.

Q: *What trade legislation is the Administration currently considering and how can groups best advocate their positions on this legislation?*

Walden: The most important thing groups can do is be in contact not only with their own members of Congress but also stay in close contact with various national organizations and make sure that those organizations are in contact with those members of Congress and with the administration. These agreements, once reached, are very difficult to change. Situations have arisen where things have come out after an agreement that we should have known before, because we might have been able to prevent a problem. So, it is going to be even more important now to be very aggressive, to make sure that your views are known to both those who are negotiating the agreements and those who will be voting to approve or disapprove.

Q: *The Administration has rolled out a rather comprehensive trade agenda for 2003. We see a lot of bilateral and multilateral initiatives. What is your view on these efforts?*

Walden: The administration is negotiating several different agreements, such as with Chile and Singapore. We'll take a look at those as they come along, case by case. These agreements are going to be very important. We need to make sure that they are done for the right reasons, though, and that they are balanced when it comes to the economy of trade and not reached for some other political purpose. I also want to point out that I am not alleging that any of these agreements are being reached for

political rather than trade purposes.

At the end of the day our greatest strength as a country is that of our economy. If our economy continues to suffer than we suffer too. So we need to make sure the agreements that are reached are fair, balanced, and occasionally maybe even tilt our way—that wouldn't be bad either.

Representative Greg Walden The son of former State Representative Paul Walden, Greg grew up on a cherry orchard in The Dalles before moving to Hood River, where he graduated from high school in 1974. Greg received a Bachelor of Science degree in Journalism from the University of Oregon in1981. Before his election to Congress, Greg served for eight years in the Oregon Legislature, where he was twice chosen as the House Majority Leader. During his two years in the Oregon State Senate he served as Assistant Majority Leader. Prior to his time in the legislature, Greg worked in Washington, D.C. for more than seven years as Press Secretary and Chief of Staff for former Oregon Congressman Denny Smith.

Congressman David Wu

Interviewed by Barbara Dudley
(October 2002)

Q: *Would you like to comment generally on the positive and negative aspects of the current trade agreements?*

Wu: Trade can play a very positive role in Oregon's future. In order for Oregon to have better prospects for international trade, we need more links with the international world. Links such as these are not only good for trade—they also help encourage the expansion of democracy and human rights.

We have just had success in landing Lufthansa as a direct air link to Europe. We have a Chinese air cargo carrier coming in. We already have Korean Airlines as an air cargo carrier. I have been working very hard for two or three years now to try to get an additional passenger carrier from Asia to Portland. That is very, very important. It is important in terms of linking people to people. It is important in terms of our psychology as an international region. To think of ourselves as international players, we need that linkage. And air carriers are both physically important, in terms of the number of people and goods, and psychologically important. There are a lot of companies in Asia that come to Oregon to do business. They are either customers or suppliers, in a parallel fashion to Oregon companies, which have customers or suppliers in Asia. Currently, they fly through San Jose or San Francisco, and we'd like to have them have an option of a direct non-stop flight.

In addition to the flight itself, we need help with federal infrastructure. We already have enough gates at the airport for right now to handle this, but we've had trouble with the Immigration and Naturalization Service in the past. I think we have new management at INS which is going to be sensitive to our international needs. We intend to work with them on this. We also [need] a custom service that can clear customs well. We need both immigration and customs done in a way which provides for our national security without giving us the black eye in international communities that we have suffered in the past.

I think that international passenger carriers and the deepening the channel for a port are crucial infrastructure issues that we need to try to move on, so that we can view ourselves as an international community and in fact be an international community.

We always think of Hi-tech. We don't think of how much we do in terms of agriculture, whether it's wheat coming from the dry country or whether it's Christmas trees that are raised in Washington and Yamhill and other counties. We have been very successful in Oregon in developing Christmas tree markets overseas. Now, conversely, our berry farmers are very concerned about international competition and legitimately so.

I've met one on one, face to face with a lot of farmers, berry farmers in particular. And one of the things that is really, really helpful to the berry farmers, and to a number of other agricultural interests is source of origin labeling. You probably know that for manufactured products, country of origin labeling is mandatory. And currently 13 of our nation's 28 largest trading partners require country of origin labeling for fruit and fresh produce. Now, we were able to

take steps in that direction, to permit or require some labeling. I was able to work with Mary Bono (R-CA) and Darlene Hooley [D-OR] on this, which at least gives people the choice. This is what it should be about.

We'll return to this in the larger trade context. It's about letting people know what they are getting and letting people choose, and if some producers have a problem with that, they should educate the public about why maybe folks should make different choices, but we shouldn't be forcing things on people. We should make the information available, such as country of origin labeling on fresh fruit and produce and let people choose. And that is a piece of legislation I'm very proud to have worked on. Darlene Hooley did good work on it. Mary Bono did good work on it. And I think that that is very, very important.

Q: *Don't you think county of origin labeling will be subject to challenge at the WTO as a nontariff barrier to trade?*

Wu: If it does present a problem in the WTO context, this is one aspect of the WTO which needs to be changed. It is not a matter of changing [the labeling laws]. I think the WTO should be changed because, as we discussed earlier, we should be permitting consumers additional choice, and if some businesses and some countries don't like what the consumers are choosing, then they are free to engage in an educational campaign and try to affect the way that the consumers make their decisions. They should not come in with a sledge hammer and say, "You, dear consumer, shall operate in a state of ignorance That is not, to me, what the WTO is all about. So, I think, if it does become a problem, this is something about the WTO that we should change. The WTO should give us more choices, not fewer choices.

Q: *What do you think of the debate within the WTO about agricultural subsidies and of the impact of increasing subsidies in the United States on developing countries?*

Wu: In the grand scheme of things, in an international comparison, we're really in the middle of the road with respect to agricultural subsidies. The Europeans, and the French in particular, are much more subsidy oriented, whereas the Australians, for example, are less subsidy-oriented than we are. And here's the challenge: agricultural policy is so much a matter of culture. There are the little rice farmers in Japan. There's the French interest in Roquefort cheese, the French countryside. The Australians chose to pay a terrific price in their agriculture sector to decrease their subsidies, and now, they are mad at the rest of the world, because the rest of the world hasn't followed quite as closely in their footsteps, as perhaps they would have wanted it to.

Countries have difficult choices to make, such as "Do we want family-owned farms, which may be smaller, perhaps less efficient than very, very large corporate-owned properties?" This is a legitimate decision for societies to make for themselves. And then, we need to work out some sort of accommodation in international trade. I think that what we need to get to is some discussion of rates of change.

That is, in making these adjustments between us and the French, between us and the Australians, and the sort of different ends of the farm subsidy spectrum, the rate at which we make adjustments so that we can have better exchange, better trade, is very, very important because, if you don't move past a certain glacial pace, you'll never get there, but if you have explosive decompression, you could have disastrous effects. We need to strike a common sense balance in the rate of change so that people, individuals and the societies in which they live, and the particular industries, can make adjustments.

It is as important for hi-tech as it is for agriculture. It's just that you could probably adjust high-tech a little bit faster than you can agriculture, but time and again, I think the rate phenomena is very, very important.

Let me turn to the Jordan trade agreement model, and how our office approached the Trade Promotion Authority (TPA) discussions. To bring all the readers to the same spot, our trade agreement with Jordan, in essence, struck a middle ground. Instead of being prescriptive about what Jordan should do, or what the United States should do, what the agreement said was basically, "Jordan will not cheat on its domestic environmental laws, for example, in order to gain trade advantage with the United States, and the United States will not cheat on its domestic environmental laws to gain a trade advantage with respect to Jordan. Now, some people view this as something that interferes too much in free trade. Some people view this as not strong enough in protecting the environment. This provides a workable model, a middle ground model, for going forward.

What came before the U.S. Congress in this last session, in the TPA bill *(Fast Track—ed)*, was something that purported to be based on the Jordan trade agreement model. That is to say, in

negotiating trade agreements, countries will agree not to cheat on their domestic labor laws or their domestic environmental laws in order to gain a trade advantage. I think this is a potentially workable model for the future.

So, number one, we wanted to introduce human rights into the equation. Each signatory country should respect its own domestic human rights and civil liberties law, as well as its environmental law and labor law. In my view, a lot of countries have good laws on the books, they just happen to not enforce them.

The second thing that we sought to do was to close a gaping loophole which basically said, "Yes, we mentioned the environment and labor, but we really didn't mean it. You are free to ignore that. There's going to be no enforcement mechanism for any violations of labor or environmental provisions."

Ultimately, we were not successful in closing that loophole, and as they say in negotiations, for me that was the "deal point." I tried to talk to a lot of people about it, to fight for our positions, and ultimately, they passed it by one vote in the House and told me that my vote was not necessary and they didn't want to negotiate. I wish they had. But they chose to break various legs and get the votes they needed without making what were salutary, common sense improvements to the bill. That's very, very unfortunate.

It is one of my goals to get serious consideration of human rights as part of our discussions about economics, business, trade and our relations with other countries. It's very important to shaping a better future. Business is part of that, but it's not an automatic part of that. We need to incorporate it as part of our discussions.

Q: *Without an enforcement mechanism, the labor and environmental agreements become meaningless, don't they?*

Wu: Yes. An unenforceable right is no right at all. A right without a remedy is no right.

Q: *Do you think that, beyond calling on each country to enforce its own environmental and labor laws, it would be possible or even desirable to include uniform international standards in the trade agreements?*

Wu: Well, I think that it would be extremely difficult at this point in time to develop uniform standards that all the countries of the world could agree on. Maybe it will be possible in the future. I don't think it's likely today. I think that the founders of this country were wise regarding some things.

One was to set up a system of checks and balances. Another was their insight about human nature, and the power of educated public opinion. One aspect of human nature is that we want to look good in the eyes of our neighbors, so quite frequently, we have decent statutes on the books about things like human rights and the environment and so on. People want to look good in the eyes of the world. However, once we have the window dressing of decent formal laws, some governments then deliberately fail to enforce them. We should press for fair enforcement of existing laws. Universal standards sounds better in something like Star Trek than it does right now.

Q: *But what of the WTO's tendency to find local rules on food safety, environmental protection, etc., to be impermissible, nontariff barriers to trade?*

Wu: I think that this is going to be a recurring issue. And I go back again to the discussion of rate of change, because these are things which deserve to be examined on a case by case basis; local rules sometimes really are non-tariff trade barriers. Other times they reflect very legitimate health and safety concerns. They are sometimes manifestations of individual consumer choice or collective consumer choice as expressed by local government. And we should give effect to many of these choice decisions and cull out from them the wolf in sheep's clothing: the imposition of decisions based on preferential treatment, which is another denial of consumer choice.

What am I talking about? If the Japanese digestive system is truly different, and the Japanese digestive system truly insists on Japanese rice, and that is something scientifically demonstrable, then that is something we should consider, but I deeply suspect that that is a rule which is a non-tariff trade barrier. Or that is an argument, which justifies non-tariff trade barriers.

But you know that's right on the edge of some kind of health and safety argument, isn't it? You can easily imagine a legitimate health and safety argument promulgated by a local jurisdiction or a recycling requirement that can be met by different international entities, and that ought to be respected. So, we should slow down the rate of change, so that we can look at these one by one.

A second general principle, and you've heard this discussed a lot, is transparency of the decision-making processes. You know, it was appropriate once upon a time to have a group of specialists, to have trade lawyers or trade negotiators decide these issues in closed rooms. That was when we were talking primarily about codes or lines in a tariff book. We are not talking about that anymore. We are talking about what the town of Cambridge, Massachusetts may purchase, or what the community of Portland, Oregon, may purchase. And if we are going to be talking about things that affect people's lives that close at hand, then the decision-making process really does need to be more open. That, in itself, needs to be adjusted in a measured way. You can easily imagine business scenarios where it is not justified to have things debated openly as they are in Congress and then other decisions, which need to be very transparent. We must differentiate between discussions that affect health and safety as opposed to trade secrets.

Q: *Speaking of trade secrets, what is your opinion of the intellectual property provisions in the WTO?*

Wu: [laughs] Well Barbara, we have touched upon an area that is a favorite topic of mine. As you know, I practiced intellectual property law and trade law before coming to Congress. And it's a subject which maybe we'll come back to discuss again, either in the trade context or in the intellectual property context. I don't have a solution for this yet. You think of something like research that has been paid for by the American tax payers at, say, the National Institutes for Health, or research done at Oregon Health and Science University, and what if OHSU prefers to licensing Oregon companies, or if NIH prefers American companies? Is that sanctionable in a WTO context? That is a much, much larger issue, which, I think, has decent arguments on both sides of it.

I'm coming from a spot where I remember the first technology transfer officer that Stanford University ever had. And on a just very informal basis, he always preferred to license Stanford's technology to American companies. But, at the end of the day, if he couldn't find any American takers, he would license a foreign one. So, on the one hand, Gentech is located in South San Francisco, and on the other, nobody would license the mathematics which are at the core of the Yamaha Player Piano and Organ, except Yamaha. But Stanford did both deals. And whether one is sanctionable or not, let us leave that to a future discussion.

Representative David Wu was educated in public schools, earned a BS from Standford University in 1977, attended Harvard Medical School, and received a law degree from Yale University in 1982. In 1988 he co-founded the law firm of Cohen & Wu and successfully served the high technology industry and numerous small businesses throughout the Northwest and Oregon for a decade.