Group recommends that the President direct the Secretary of Energy to explore potential opportunities to develop educational programs related to energy development and use. This should include possible legislation to create public awareness programs about energy. Such programs should be long term in nature, should be funded and managed by the respective energy industries, and should include information on energy's compatibility with a clean environment.''

The legislation currently under consideration in the House/Senate conference addresses a lot of important issues but these are tactical issues relating to energy. In order to better solve the Nation's long-term energy security or energy needs we must address public education.

One of the best ways to go about this would be with a broad based education program as recommended in chapter two. Today's public is far better informed about their energy choices than the public of even a decade ago, but there is always more room to learn. A highly informed public will be able to make better energy choices and will demand a long-term, far-reaching energy policy.

This will require broad based national, and international, public education and information programs on energy issues, including conservation and efficiency, the role energy plays in the economy and the impact energy use has on the environment. There must also be a focus on the interlocking relationship of what are referred to as the 3 Es: energy, economy, and environment.

It is important that all 3 Es be considered simultaneously in order to have credibility and to recognize this interlocking relationship. It is also important that any effort that tries to achieve a cultural change in how society views energy recognize its importance in the public's economic well-being and its role in the public's quality of life.

An excellent example of this is being conducted by the Energy Literacy Project, ELP. The ELP is currently supporting an ongoing research effort at the Colorado School of Mines to identify programs that offer educational material about the interlocking nature of Energy, the Economy and the Environment, the 3 Es. The ELP is a non-profit 501(c)(3) corporation whose goal is to see a cultural change in how society views the role energy plays in its economic well-being and in its quality of life. They have an excellent web site that explains much of their work located at www.energyliteracy.org.

The public wants and deserves sound, reliable information. A sustainable energy policy will be much more easily attained with a knowledgeable public that can make informed, well-reasoned decisions about its choices and a sustainable energy policy.

SKILLED NURSING FACILITIES

Mr. SMITH of Oregon. Mr. President, I would like to raise another issue today which has a major impact on older and disabled Americans and their families, nursing homes. Under current law, Medicare rates for seniors in nursing homes were reduced by ten percent as of October 1, because a series of previously-enacted add-on provisions expired. Let me be clear. On October 1, the average per diem payment to a nursing home to care for a Medicare patient was cut to a level ten percent lower than it was on September 30. The average rate fell from $337/day to slightly more than $300/day. This is a real cut.

This negative quirk results from the fact the Clinton Administration poorly implemented the Balanced Budget Act, BBA, of 1997, and in the process, set Medicare rates for seniors in nursing homes far below the levels Congress set out in the BBA of 1997. Recognizing that the new system was paying much less for nursing home care for Medicare patients than it had intended, Congress passed the Balanced Budget Refinement Act of 1999 and then the Beneficiary Improvement Protection Act of 2000, which provided limited fixes to the payment structure for skilled nursing care through add-on payments. But, because it was expected HCFA, now CMS, would ''refine'' the rates and fix the problem, these add-ons were temporary. However, CMS has not yet acted, and the ''add-on'' provisions have now expired.

Recognizing the pending cuts needed to be prevented, in June, I, along with several of my Senate colleagues, introduced the Medicare Skilled Nursing Beneficiary Protection Act of 2002. Because I felt Congress must ensure beneficiary access to quality care, my bill would protect funding levels for Medicare skilled nursing patients by maintaining payments at 2002 levels going forward.

During the last few years, five of the nation's largest providers of long-term care have filed for Chapter 11 bankruptcy protection. Some of those companies are just now emerging from that wrenching process. Moreover, 353 skilled nursing homes have closed. In my home State of Oregon alone, 23 skilled nursing facilities, SNFs, have closed—a loss of almost 1,500 beds. For a small state like Oregon, this is a significant loss. With the cuts in Medicare funding, a vital segment of our country's health care system is beginning to be thrown, once again, into crisis. More facilities will close. Patients, especially those in rural areas, will find it more difficult to obtain the long-term care services they need.

The instability of skilled nursing facilities is expected to worsen as states reduce Medicaid expenditures in the face of significant budget shortfalls and as private market capital continues to withdraw from the sector. If Congress goes home before re-instating the Medicare payment add-ons, it will result in failures in the sector that will translate to unparalleled access problems for Medicare patients needing care in our nation's skilled nursing facilities. I will do everything I can to ensure quality care for our nation's seniors is not threatened.

CONGRESSIONAL-EXECUTIVE CONSULTATION ON TRADE

Mr. BAUCUS. Mr. President, in the coming weeks, the Finance Committee will be working closely with the Office of the U.S. Trade Representative to develop written Guidelines on consultations between the Administration and Congress in trade negotiations. These Guidelines will be our roadmap for collaboration between the Executive and Legislative Branches on trade negotiations for the next five years. They will be the basis for the partnership of equals called for by the Trade Act of 2002.

The trade negotiation agenda promises to be busy. Even before passage of the Trade Act, work was under way in the Doha Round of WTO negotiations and in the Free Trade Area of the Americas negotiations. USTR also was busy concluding free trade agreements with Chile and Singapore. Since passage of the Trade Act, USTR has expressed the Administration's interest in beginning FTA negotiations with Morocco, Central America, the Southern African Customs Union, and Australia.

This busy agenda requires maximum clarity in the rules governing interaction between the Administration and Congress. Clear rules will form a foundation for a common understanding of how we bring trade agreements from the concept phase to the implementation phase. This common understanding will help ensure a smooth process, with few if any surprises or bumps in the road.

The Trade Act defines the scope of coverage of the contemplated Guidelines on trade negotiations. Specifically, the Guidelines are required to address: the frequency and nature of briefings on the status of negotiations; Member and staff access to pertinent negotiating documents; coordination between the Trade Representative and the Congressional Oversight Group at all critical periods during negotiating sessions, including at negotiation sites; and consultations regarding compliance with and enforcement of trade agreement obligations.

The Guidelines also must identify a time frame for the President's transmittal of labor rights reports concerning the countries with which the United States concludes trade agreements.

The Trade Act contemplates collaboration among USTR, the House Ways and Means Committee and the Senate Finance Committee in developing the Guidelines. I would like to use this opportunity to propose specific provisions that should be included in the Guidelines to maximize the potential for a

true partnership between the Legislative and Executive branches.

The first issue that needs to be addressed is access to negotiating documents. When U.S. negotiators prepare to make an offer to their foreign counterparts, Congressional trade advisers and staff must be able to review the proposed offer in time to provide meaningful input. In general, trade advisers and staff should be able to see such documents not less than two weeks before U.S. negotiators present their offer to our negotiating partners. This will give trade advisers time to convey comments and make recommendations, with a reasonable expectation that their comments and recommendations will receive serious consideration.

By the same token, when another country makes an offer during the course of a negotiating session, that offer should promptly be made available to Congressional trade advisers and staff. This will enable trade advisers to keep abreast of the give-and-take of negotiations and to provide intelligent input into the development of the U.S. position.

Second, Congressional trade advisers and staff should have access to regularly scheduled negotiating sessions. I know that some in the Administration will bridle at this suggestion, citing separation of powers concerns. However, I do not think those concerns are warranted.

I am not suggesting that trade advisers or staff actually engage in negotiations. I am suggesting only that they attend as observers. This level of Congressional involvement in negotiations has well established precedents. A recent study by the Congressional Research Service on the role of the Senate in treaties and other international agreements catalogued instances of Congressional inclusion in delegations stretching back to negotiations with Spain in 1898 and continuing to the present day.

I ask unanimous consent that the relevant pages of this lengthy CRS study be printed in the RECORD at the conclusion of this statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAUCUS. In the early part of the last century, Presidents Harding and Hoover actually designated Senators as delegates, not merely observers, to arms limitation negotiations. President Truman included Members of Congress in the delegations that negotiated the establishment of the United Nations and the North Atlantic Treaty.

More recently, a special Senate Arms Control Observers Group was created in 1985 to oversee negotiations that led to the first Strategic Arms Reduction Treaty. It included distinguished members of this body, including Senators LUGAR, STEVENS, Nunn, Pell, Wallop, Moynihan, KENNEDY, Gore, WARNER, and NICKLES. President Reagan embraced this endeavor, precisely because he knew that a close working relationship with the Senate at the beginning of negotiations would increase the likelihood of ratification at the conclusion.

Indeed, the history of Congressional involvement in the negotiation of treaties and other international agreements has its roots in the very origins of our Nation. Until the closing days of the Constitutional Convention of 1787, the Framers had intended for the Senate to have the sole authority to make treaties. And in the Federalist Papers, Alexander Hamilton acknowledged that treaty making ''will be found to partake more of the legislative than of the executive character . . .''

The well-recognized utility of Congressional involvement in treaty and international agreement negotiation applies with even greater force when it comes to international trade. For here, the making of international agreements intersects with the Constitution's express grant of authority to Congress to regulate commerce with foreign nations.

The statute that framed trade negotiations for the last quarter century, the Trade Act of 1974, contemplated a close working relationship between Congress and the Administration. Thus, during the Tokyo Round and Uruguay Round of multinational trade negotiations, staff of the Finance Committee and the House Ways and Means Committee traveled regularly to Geneva. They were included in U.S. Trade Representative staff meetings and observed negotiations of plurilateral and multilateral agreements. They had regular access to cable traffic and other negotiating documents. By all accounts, this process worked well. Staff, and, in turn, Members were kept well informed of the progress of negotiations, which helped to secure Congressional support for the resulting agreements.

In fact, there are numerous illustrations of close interaction between Executive and Legislative Branches in the trade negotiation arena. I myself have attended trade negotiating sessions on a number of occasions. Just last year, my staff and I attended a session of the Free Trade Area of the Americas negotiations in Quebec City. Before that, I attended some sessions of the mid-term meeting of the Uruguay Round negotiations in Montreal. I know that Members of Congress also have been included in delegations to WTO Ministerial meetings in Singapore and Seattle. And, I understand that during the Uruguay Round, Members traveled to Geneva at key junctures in negotiations on trade remedy laws, and were included in the official delegation to a Ministerial meeting in Brussels.

Even in the period from 1994 to 2002, when fast track negotiating authority lapsed along with the express mandate for a Congressional-Executive partnership on trade, Members of Congress sought to remain closely involved. For example, I understand that my friend Senator GRASSLEY sought permission for staff of the General Accounting Office to attend certain negotiations, in order to keep Congress well informed.

Now, fast track has been renewed. Once again, we have an express mandate for a Congressional-Executive partnership on trade. Indeed, the Trade Act of 2002 contemplates an even closer working relationship between Congress and the Administration than the Trade Act of 1974. It is time to revive and strengthen the practices that solidified a close, robust working relationship in the past.

Given the long history of Legislative-Executive partnership in negotiating in a whole host of sensitive areas, given the constitutional role of Congress when it comes to regulation of commerce with foreign nations, and given the policy articulated in the Trade Act of 2002, I see little basis for excluding Congressional observers from trade negotiations.

Third, the Guidelines should set forth a clear schedule and format for consultations in connection with negotiating sessions. At a minimum, negotiators should meet with Congressional advisers' staff shortly before regularly scheduled negotiating sessions and shortly after the conclusion of such sessions. To the extent practicable, the Administration participants in these consultations should be the individuals negotiating on the subjects at issue, as opposed to their supervisors.

Consultations should be an opportunity for negotiators to lay out, in detail, their plan of action for upcoming talks and to receive and respond to input from Congressional advisers. Whenever practicable, consultations should be accompanied by documents pertaining to the negotiation at issue. If advisers of staff make recommendations during consultation sessions, arrangements should be made for negotiators to respond following consideration of those recommendations.

Additionally, to the extent that Congressional advisers or staff are unable to attend negotiating sessions, arrangements should be made to provide briefings by phone during the negotiations.

The key point here is that it is the quality as much as the quantity of negotiations that counts. It matters little that the Administration briefed Congressional advisers a hundred times in connection with a given negotiations, if the briefings amount to impressionistic summaries with no meaningful opportunity for advisers to offer input.

Fourth, the Guidelines must set forth a plan to keep Congressional advisers fully and timely informed of efforts to monitor and enforce trade agreements. In any trade agreement, follow up is critical. If compliance is spotty, the agreement is not worth the paper it is written on. Also, monitoring and enforcement help to identify provisions that might be modified in future trade agreements.

Currently, Congressional advisers get briefed when a formal dispute arises or

sanctions are threatened or imposed. Keeping Congressional advisers in the monitoring and enforcement loop tends to be episodic. It should be systematic.

The Guidelines should provide for consultations with Congressional advisers on monitoring and enforcement at least every two months. These consultations should not just highlight problems. They should provide a complete picture of how the Executive Branch is deploying its monitoring and enforcement resources. They should identify where these efforts are succeeding, as well as where they require reenforcement.

In conclusion, the Trade Act of 2002 represents a watershed in relations between the Executive and Legislative Branches when it comes to trade policy and negotiations. Before the Trade Act, the Executive Branch generally took the lead, and the involvement of Congressional advisers tended to be cursory and episodic. In the Trade Act, Congress sent a clear message that the old way will not do.

From now on, the involvement of Congressional advisers in developing trade policy and negotiations must be in depth and systematic. Congress can no longer be an afterthought. The Trade Act establishes a partnership of equals. It recognizes that Congress's constitutional authority to regulate foreign trade and the President's constitutional authority to negotiate with foreign nations are interdependent. It requires a working relationship that reflects that interdependence.

Our first opportunity to memorialize this new, interdependent relationship is only weeks away. I am very hopeful that the Administration will work closely with us in developing the Guidelines to make the partnership of equals a reality.

EXHIBIT 1

TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE

On occasion Senators or Representatives have served as members of or advisers to the U.S. delegation negotiating a treaty. The practice has occurred throughout American history. In September 1898, President William McKinley appointed three Senators to a commission to negotiate a treaty with Spain. President Warren G. Harding appointed Senators Henry Cabot Lodge and Oscar Underwood as delegates to the Conference on the Limitation of Armaments in 1921 and 1922 which resulted in four treaties, and President Hoover appointed two Senators to the London Naval Arms Limitation Conference in 1930.

The practice has increased since the end of the Second World War, in part because President Wilson's lack of inclusion of any Senators in the American delegation to the Paris Peace Conference was considered one of the reasons for the failure of the Versailles Treaty. Four of the eight members of the official U.S. delegation to the San Francisco Conference establishing the United Nations were Members of Congress: Senators Tom Connally and Arthur Vandenberg and Representatives Sol Bloom and Charles A. Eaton.

There has been some controversy over active Members of Congress serving on such delegations. When President James Madison appointed Senator James A. Bayard and Speaker of the House Henry Clay to the commission that negotiated the Treaty of Ghent in 1814, both resigned from Congress to undertake the task. More recently, as in the annual appointment of Senators or Members of Congress to be among the U.S. representatives to the United Nations General Assembly, Members have participated in delegations without resigning, and many observers consider it ''now common practice and no longer challenged.''

One issue has been whether service by a Member of Congress on a delegation violated Article I, Section 6 of the Constitution. This section prohibits Senators or Representatives during their terms from being appointed to a civil office if it has been created or its emoluments increased during their terms, and prohibits a person holding office to be a Member of the Senate or House. Some contend that membership on a negotiating delegation constitutes holding an office while others contend that because of its temporary nature it is not.

Another issue concerns the separation of powers. One view is that as a member of a negotiating delegation a Senator would be subject to the instructions of the President and would face a conflict of interest when later required to vote on the treaty in the Senate. Others contend that congressional members of delegations may insist on their independence of action and that in any event upon resuming their legislative duties have a right and duty to act independently of the executive branch on matters concerning the treaty.

A compromise solution has been to appoint Members of Congress as advisers or observers, rather than as members of the delegation. The administration has on numerous occasions invited one or more Senators and Members of Congress or congressional staff to serve as advisers to negotiations of multilateral treaties. In 1991 and 1992, for example, Members of Congress and congressional staff were included as advisers and observers in the U.S. delegations to the United Nations Conference on Environment and Development and its preparatory meetings. In 1992, congressional staff advisers were included in the delegations to the World Administrative Radio Conference (WARC) of the International Radio Consultative Committee (CCIR) of the International Telecommunications Union.

In the early 1990s, Congress took initiatives to assure congressional observers. The Senate and House each designated an observer group for strategic arms reductions talks with the Soviet Union that began in 1985 and culminated with the Strategic Arms Reduction Treaty (START) approved by the Senate on October 1, 1992. In 1991, the Senate established a Senate World Climate Convention Observer Group. As of late 2000, at least two ongoing groups of Senate observers existed:

1. Senate National Security Working Group.—This is a bipartisan group of Senators who ''act as official observers to negotiations * * * on the reduction or limitation of nuclear weapons, conventional weapons or weapons of mass destruction; the reduction, limitation, or control of missile defenses; or related export controls.''

2. Senate Observer Group on U.N. Climate Change Negotiations.—This is a ''bipartisan group of Senators, appointed by the Majority and Minority Leaders'' to monitor ''the status of negotiations on global climate change and report[ing] periodically to the Senate * * *.''

OUR LADY OF PEACE ACT

Mr. LEVIN. Mr. President, a sensible gun safety measure has been recently passed by our colleagues in the House of Representatives. The ''Our Lady of Peace Act'' was first introduced by Representative CAROLYN MCCARTHY after Reverend Lawrence Penzes and Eileen Tosner were killed at Our Lady of Peace church in Lynbrook, NY on March 12, 2002. These deaths may have been prevented if the assailant's misdemeanor and mental health records were part of an automated and complete background check system.

According to the House Judiciary Committee Report on the bill, 25 States have automated less than 60 percent of their felony criminal conviction records. While many States have the capacity to fully automate their background check systems, 13 States do not automate or make domestic violence restraining orders accessible through the National Instant Criminal Background Check System, otherwise known as NICS. Fifteen States do not automate domestic violence misdemeanor records or make them accessible through NICS. Since 1994, the Brady Law has successfully prevented more than 689,000 individuals from illegally purchasing a firearm. More ineligible firearm purchases could have been prevented, and more shooting deaths may have been avoided had state records been fully automated.

The Our Lady of Peace Act would require Federal agencies to provide any government records with information relevant to determining the eligibility of a person to buy a gun for inclusion in NICS. It would also require states to make available any records that would disqualify a person from acquiring a firearm, such as records of convictions for misdemeanor crimes of domestic violence and individuals adjudicated as mentally defective. To make this possible, this bill would authorize appropriations for grant programs to assist States, courts, and local governments in establishing or improving automated record systems. I hope we can move in this direction this Congress or next.

ASSISTANCE FOR SOUTH DAKOTA MEDICARE BENEFICIARIES AND PROVIDERS

Mr. JOHNSON. Mr. President, one of the key remaining issues of the 107th Congress that I believe must be addressed yet this year is Medicare relief for rural health care providers and beneficiaries. Recently, bipartisan legislation was introduced, called the Beneficiary Access to Care and Medicare Equity Act of 2002, S. 3018, that will provide definitive steps to strengthen South Dakota's rural health care delivery system. I am pleased to be a cosponsor of this bill.

The legislation will provide $43 billion over ten years for provider and beneficiary improvements in the Medicare and Medicaid programs. Earlier