Perspectives
on current developments

The Regulatory Calendar: A Catalog without Prices

The second edition of the *Calendar of Federal Regulations* released on November 28, 1979, provided cause for both hope and dismay among those interested in improving government regulation. Prepared by the Regulatory Council, the calendar is intended to present an overview of federal regulatory activity by setting forth basic information on all "major" regulations in the works—that is, all those having an economic impact of over $100 million. Regulatory Council Chairman Douglas Costle calls the effort the "cornerstone of meaningful reform of the regulatory process."

The cause for hope lies mainly in the fact that the calendar exists—that any compilation of forthcoming federal regulations is better than no compilation at all. In addition, however, this second calendar *is* somewhat better than the first one, which was issued last February. Five more agencies have submitted entries, including this time the Federal Communications Commission and the Federal Trade Commission (both of which are independent agencies and hence not strictly required to participate in the calendar). Twenty-five regulatory agencies are now included, the Securities and Exchange Commission and the Federal Reserve Board being the only eligible agencies still declining to participate.

Regulatory Council Director Peter J. Petkas argues that coverage of the regulations themselves has also improved. He notes that the new regulatory calendar covers 129 regulations (in 228 pages) compared with the first edition's 109 (in 128) and that entries have been restructured to provide more useful information. Whereas entries in the first calendar opened with a confusing paragraph on "Objectives and Benefits," the new entries begin with a "Statement of Problem" intended to provide insight into the motivation behind the rule. Perhaps a more important (though still largely cosmetic) change is the division of the old section on "Economic Effects" into separate sections on "Benefits" and "Costs."

The calendar is also bolstered by new and improved appendices. One appendix provides information on proposed regulations that appeared in the first calendar but do not appear in the second, because they were terminated, made final, or determined to be "not major." (Of the proposals listed in the February calendar, twenty-five had resulted in final rules by November 1.) Another appendix provides information on public participation in the regulatory process. Yet another gives the publication dates of the regulatory agendas, which are individual agency reports listing *all* regulations under development rather than only the major ones. Plans are in the making, Petkas says, to synchronize the publication dates of the regulatory agendas with that of the calendar, so that a complete listing of all regulations in process at all agencies would appear every six months, followed immediately by the summary regulatory calendar.

On balance, however, the calendar is still disappointing. One serious failing is the complete lack of data on the distributional effects of regulation. Agencies have long balked at the idea of identifying the groups that win and lose as a result of their regulatory decisions, and apparently they are continuing to do so.

By far the most important weakness, however, is the failure of the Regulatory Council to insist on useful, consistent data on benefits and costs. In an explanatory handout, the council notes that "because agencies do not report the same kinds of cost data, one cannot establish aggregate costs for a group of regulations. We are a long way from having standard methods for determining the cost of regulations." The handout then likens the council's difficulties in getting agencies to report consistent data to the data consistency problems faced by the Busi-

ness Roundtable study. But the comparison seems only partly valid. To a large extent, the problem faced in that study was one of measurement: the data needed to measure some of the effects hypothesized were simply not available. (On the Business Roundtable study, see Marvin H. Kosters, "Counting the Costs," *Regulation*, July/August 1979.) The problem faced by the council, however, is one of reporting: benefit-cost data that *are* available are not being reported in a useful, consistent form. For instance, entries in the calendar fail to distinguish between incremental compliance costs and total costs, between future costs and present costs, between capital costs and operating costs, and between cost estimates that are final and those that are preliminary. If the calendar is to fulfill its goal of providing an overview or "big picture" of upcoming regulations, cost data must be stated in a way that allows comparison and summation.

The Regulatory Council seems to realize these shortcomings, especially the need to identify distributional effects, and is trying to correct them. At a recent press briefing, Petkas noted that the council is working up a new set of guidelines for entries. The problems in the calendar, however, are too basic to be remedied by a set of voluntary guidelines.

Indeed, the need to lay down mandatory guidelines for regulatory analysis is exemplified by the fuzzy thinking so evident in many of the November calendar's entries. One (not exceptional) example is the Department of Agriculture's entry on its proposal to prohibit the before-lunch sale of "junk foods" in schools participating in the federal school-lunch program. In the section on the benefits of the proposal, there is a general discussion of the effects of eating nonnutritious food before eating lunch, leading to the conclusion that the rule "could in part help to reduce the prevalence of . . . nutritional disorders." But the Department of Agriculture does not specifically identify any suffering that would be avoided by the rule, nor does it estimate the number of children to be affected, the amount of "junk food" they might consume, or the effects of such foods on the childrens' health. Surprised by the absence of such information, the reader is further surprised to discover that at least some of the data needed to estimate benefits are included in the section on costs. In arguing that "[b]ecause of the limited nature of the regulation, industries should not experience large changes in sales," the department states that "only a limited number of students" have access to "junk foods" and marshalls extensive empirical evidence to support its point. Such foods are available in schools attended by only 22 percent of the nation's school children, and the total sale amounts to 3.44 candy bars and 3.26 cups of soft drink per student per month at these schools. In other words, *the average number of candy bars and soft drinks consumed per student per month is less than one* (3+ times 22 percent)! Certainly this information, properly used, would call into question the significance of the proposal's benefits, as well as its costs; and the failure to use it has to be regarded either as ineptitude or as deliberate overstatement of benefits and understatement of costs.

What finally emerges from the regulatory calendar, then, is a picture of a regulatory apparatus that can draw up a list of its activities, but cannot—or will not—adequately describe the effects those activities may have. The only sure thing is that the effects, benefits as well as costs, loom large. The 129 "major" regulations included in the November calendar are there (with few exceptions) because they are expected to impose costs on the economy of more than $100 million each. Assuming, conservatively, that each regulation would cost the minimum, $100 million, the total expected cost of these regulations is nearly $13 billion. Presumably, the agencies would allege that the aggregate benefits are even greater.

According to the calendar, regulations may soon ban advertising aimed at children, establish minimum cab space dimensions for trucks, regulate the market for milk around Boise, Idaho, and ration gasoline. Comprehensive carcinogen policy statements are about to be issued by the Occupational Safety and Health Administration and the Environmental Protection Agency. The Consumer Product Safety Commission is preparing to set new standards on furniture flammability. The Mine Safety and Health Administration is required to set standards for the health and safety training of 75,000 mine construction workers. And on and on. Moreover, the regulations included in the calendar are only the tip of the iceberg. Not included are the many "emergency" regulations that will be promulgated in the coming six

months, or the literally thousands of "nonmajor" regulations whose estimated costs are less than $100 million.

Some of these regulatory proposals are presumably justified; others may not be. What is certain, however, is that the regulatory calendar provides few clues on which is which. As it now stands, the calendar is like a catalog without prices—fun to browse through, but not a basis for action.

Invisible Bureaucracy

Senator David Pryor (Democrat, Arkansas) recently characterized the growing number of government consultants as an "invisible bureaucracy" with no real accountability for its performance. At hearings of his civil service subcommittee in October, Pryor complained that two-and-one-half years after the President had requested information on the number and cost of consulting contracts signed by federal agencies, the Office of Management and Budget was still unable to provide it—much less to assess the quality of work obtained from these contracts. He reported, however, that conservative estimates put the total cost of such contracts at more than $2 billion a year.

The need for sound management and accounting controls cannot be gainsaid, but criticism of the sheer number of consulting contracts raises more difficult issues. Successive administrations have actually encouraged increasing reliance on outside consultants. Partly this has been a device to evade cumbersome civil service restrictions and the across-the-board personnel freezes that every administration imposes for short periods when it wants to appear tough on government "growth." But it has also been a principled policy—of long standing, but considerably strengthened under President Ford—to encourage agencies to contract from the private sector all services that it would be more expensive to provide "in-house."

Research is a prime example of such a service. It frequently involves nonrecurring problems and issues, and thus requires skills that would not be employed full-time within any single agency, or perhaps even within the government as a whole. Whereas consulting contracts need not be renewed, research capacities built up within an agency are hard to dismantle or reassign after the immediate need has passed —and carry with them such hidden costs as employee retirement benefits. As the scope of federal regulation has expanded, it has become increasingly inefficient for the government to maintain a sort of "shadow private sector" to oversee all of the highly technical subjects that now come within its ken.

But if efficiency is part of the reason for the consultancy boom, at least an equivalent part is the inability of the government to attract the necessary personnel on any other basis. First-rate experts in some fields often cannot be hired, though they will be prepared to devote as much as full time to a particular government project on an "end product" contract basis. In some areas of innovative research, this may be attributable to the fact that a consultancy arrangement leaves the contractor free to choose his next project, rather than having it assigned by management decree. But often the reason is simply that a negotiated contract can reflect the realities of the marketplace, whereas federal employment salaries in all fields—whatever the scarcity may be—are subject to an absolute ceiling that is ultimately determined by, and somewhat below, the level of congressional salaries.

The reality of the expert gap and the use of consultants to fill it is nicely exemplified by a recent proceeding under the Occupational Safety and Health Act, contesting the Labor Department's citation of a Reynolds Metals plant for excess noise levels. In the course of the case, the Occupational Safety and Health Review Commission—in order to protect Reynolds's asserted trade secrets—required that the department use a federal expert rather than an outside consultant to conduct a discovery inspection regarding feasible engineering controls. After conducting a search of twenty-six federal agencies, the department reported to the administrative law judge that it could find no expert equivalent in education and experience to the average outside expert it had previously used, and refused to proceed unless the ban were lifted. The judge, bound by the commission's earlier order, dismissed the citation and complaint. On appeal, the commission relented, requiring use of a federal expert only if Reynolds could first establish the existence of trade secrets—and even then only if the depart-

ment could not show "good cause" for using an outside consultant.

Nonetheless, it is clear that the use of consultants is subject to abuse—for example, as a means of evading civil service compensation levels where no real scarcity of employable personnel exists, or as a substitute for long-range personnel planning. The numerous abuses documented by Senator Pryor's staff portend and justify a tightening of internal management controls, and these, needless to say, will have their effect on the consulting industry.

Congressional Meddling at the FTC

The Federal Trade Commission is in deep trouble on Capitol Hill, where legislative restriction of its powers is seriously contemplated. Proposals with fair prospects of passage have included structural measures, such as eliminating FTC divestiture authority or subjecting all FTC rulemaking to a legislative veto. They have also included more narrowly focused provisions designed to assist particular business interests, such as excluding the funeral industry, children's television advertising, used-car dealers, and private standard-setting bodies from the commission's trade-regulation rulemaking authority; exempting agricultural cooperatives from its antitrust enforcement authority; and attaching a requirement for an "economic impact assessment" to its pending antitrust proceeding against cereal manufacturers. (On this, see also Ernest Gellhorn, page 33, this issue.)

Provisions of the second variety, two of which (those on the funeral industry and agricultural cooperatives) have already passed the House, are drawing sharp criticism from the legal community, including many segments not particularly sympathetic to government regulation. The basis of this principled criticism is that these provisions, which are targeted against pending rulemaking or enforcement cases, establish the Congress as, in the words of one critic, "a forum for interlocutory relief for parties in administrative proceedings." The concern is reflected in the resolution hastily adopted by the Administrative Conference of the United States at its semiannual meeting in December. Taking note of bills before Congress to terminate various ongoing FTC proceedings, the conference expressed its concern about the precedent that would be set by any premature congressional intervention in administrative proceedings.

> Such intervention precludes orderly development and consideration of the complex issues involved and undermines respect for the administrative process. Absent compelling circumstances or revision of the underlying substantive statute, congressional termination of pending administrative proceedings is undesirable.

The focus of criticism upon the "interlocutory" or "premature" nature of the congressional action seems misplaced. "Interlocutory appeal" is legalese for an action to appeal a particular issue involved in a case before the court renders its judgment on the entire controversy. For obvious reasons of efficiency, any legal system disfavors interlocutory appeals. Trials would be endless if, for example, they were repeatedly interrupted by appeals of rulings on the admissibility of particular testimony—rulings that are usually correct and, when wrong, usually inconsequential. But sometimes the same considerations of efficiency *favor* an interlocutory appeal, as when the reversal of a ruling upon a novel issue of law (say, a jurisdictional point) has the effect of immediately terminating a case that might take years more to develop and try. Thus, the United States Code specifically authorizes federal courts of appeals to entertain interlocutory appeals in some circumstances—and that is not infrequently done.

Looking at the present issue from the standpoint of efficiency alone, it is by no means clear that if Congress wishes the FTC to stay entirely out of a particular area it should have to keep that wish to itself until the protracted (and expensive) rulemaking or adjudicative proceeding has been completed. The answer to whether it is desirable for Congress to act sooner rather than later may depend to some extent upon the degree to which the facts developed in the FTC proceeding are likely to alter congressional views—a question on which some degree of skepticism must surely be allowed.

Or, to put the point another way, one suspects the bar would not be less upset with legislative intervention if Congress adopted the practice of waiting for the commission to issue its long-pondered rule or decree and then stepping in to nullify it. Surely the vice that pro-

In Brief–

Quitting While You're Ahead. Federal Trade Commission Chairman Michael Pertschuk was formally vindicated on December 27, when the U.S. Court of Appeals for the District of Columbia overturned a year-old district court decision that had disqualified Pertschuk from participating in the commission's rulemaking proceedings on children's advertising. The court stressed that, in the context of rulemaking, regulatory commissions were effectively acting as surrogate legislators and therefore the standards of impartiality applied to administrative adjudication were inappropriate. Though the statute granting rulemaking authority to the FTC requires the commission to follow a number of formal procedures characteristic of adjudication, still it was a mistake, the appeals court held, to deduce appropriate standards of impartiality from "the details of administrative process rather than the nature of administrative action." Since rulemaking is an essentially legislative function—and "any suggestion that congressmen may not prejudge factual and policy issues is fanciful"—a commissioner should not be disqualified from a rulemaking proceeding except "when there is a clear and convincing showing that he has an unalterably closed mind on matters critical to the disposition of the rulemaking." As an angry dissent pointed out, this standard is so lax that it allowed the court to absolve Pertschuk of bias or prejudgment in this particular case, even in the face of such contrary indications as a letter he wrote to another official relating his "*conviction*... that one of the evils flowing from the *unfairness* of children's advertising is the *resulting distortion* of children's perceptions of nutritional values." But the court's opinion noted that a more demanding standard of impartiality might "impinge upon the political process," since an "administrator's presence within an agency reflects the political judgment of the President and Senate."

Following the court's decision, Chairman Pertschuk permanently withdrew from the FTC's children's advertising proceeding. This will have the effect of preventing appeal to the Supreme Court of a decision whose enunciated principle the agency undoubtedly finds congenial. It will also serve to prevent further damage to the FTC's standing with members of Congress, who are probably more concerned about the proprieties than the technical legalities of Pertschuk's continued participation.

On Vetoes and Bureaucracies. On January 2, President Carter vetoed S. 2096, a bill requiring the secretary of health, education, and welfare to conduct a study of the long-term health effects of dioxins, the ingredient contained in the defoliant "agent orange." The extraordinary feature of the otherwise uncontroversial legislation that provoked the presidential veto was a requirement that, before the secretary could proceed with the study, its design would have to be approved by the Office of Technology Assessment. The latter is one of the new congressional offices designed, in theory, to assist Congress in its legislative functions. S. 2096 would have converted OTA, formally, into an agency that not only "advises" the Congress, but also manages executive functions.

Some charge that this is precisely the practical effect of the more common device known as the legislative veto. In theory, the legislative veto gives the houses of Congress, rather than any congressional office, the ability to disapprove executive decisions; but in practice, the critics say, it comes to the same, since members of Congress have no prospect or intention of personally reviewing the many decisions subject to the device, and will in fact delegate control to their staffs. S. 2096 provides some reason for believing that this system of bureaucracy overseeing bureaucracy is the current Congress's intended contribution to democratic government.

A Change for the Better? With more and more business decisions being affected by actions in Washington, it should not be surprising that corporate governmental affairs personnel are enjoying a bonanza. The *Wall Street Journal* reports that many companies have been beefing up their governmental relations efforts and also upgrading what used to be a job for a public relations functionary into a top corporate officer position. Thus, a survey of twenty-eight corporate vice presidents of governmental relations found that twenty-one of them—75 percent—had had their post raised to vice president in the last five years. And at Bethlehem Steel, the vice president for public affairs recently made it to president. With business now confronting the government rather than just trying to keep it at arms length, the skills needed to work effectively with Washington have taken on added lustre in the corporate world.

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vokes lawyerly disapproval is not the *timing*, but the use of legislation to overturn determinations that we have supposedly decided to remove from the ordinary political process.

And on that basis, the criticism is surely valid. A sensible system of government does not commit important decisions to expert bodies and then (with any regularity) recall them into the legislative mill. Such action is comparable to that of the manager in the private sector who regularly interferes with the execution of tasks committed to subordinates.

However, when one observes the phenomenon of such interference, one is driven to inquire after its causes. It must ultimately be attributed, of course, to ineptness on the part of

the manager. But does the ineptness consist of the failure to restrain a meddlesome tendency; or is the meddling merely a necessary corrective of an earlier failure to appoint subordinates in whom confidence can be reposed; or of a still earlier failure to provide statutory instructions sufficiently clear to enable unsupervised action? If the problem happens to be one of the last two rather than the first, then a continuation of unseemly and inefficient supervisory control may be the only prudent course, until the root of the difficulty can be eliminated.

There is evidence to suggest that this is precisely the situation with respect to congressional supervision of the FTC. The commission—now headed and staffed (at many of its upper levels) by representatives or allies of the consumer movement that was so active in the 1976 election campaign—apparently does not have the confidence of a Congress disillusioned with regulatory activism and intent upon tempering the sweeping programs of the early 70s with such concepts as "cost-benefit analysis." And as for the clarity of supervisory instructions, the Magnuson-Moss Act (passed in 1975) gave the commission virtual carte blanche not merely to punish and eliminate specific instances of "deception" or "unfairness" (whatever that means) in the marketplace, but also to prescribe by rule for the entire economy affirmative measures calculated to *prevent* such "deception" or "unfairness." It is true that only some of the proposed restrictions upon FTC action relate to Magnuson-Moss proceedings, but those proposals are the ones that have drawn the most attention and established the tone for the legislative debate.

As an abstract matter, then, one must agree with the criticism of congressional intervention in specific proceedings; but that criticism is an inadequate prescription for action unless it is joined with alternative suggestions for solving the problem of supervision—which means, in this governmental context, the problem of democratic control. The search for a solution can rationally focus upon either of the two root deficiencies, for it is the combination of the two that is fatal. That is to say, the system can work without case-by-case intervention if *either* the FTC is staffed by personnel attuned to the wishes of the current Congress *or* if the FTC's powers are sufficiently limited (or the criteria for their exercise sufficiently clear) so that the range of the commission's discretion is tolerable. But the Congress has no easy way to eliminate the first deficiency since the Constitution does not provide general legislative authority to remove executive branch personnel and indeed contemplates an executive sometimes at odds with congressional desires. The remedy must therefore be sought in the elimination of the second deficiency—the grant to the FTC of broad power without intelligible legislated standards for controlling case-by-case decisions.

It may be, in other words, that a genuine solution must begin with reconsideration of Magnuson-Moss itself and the establishment of a more particularized congressional mandate for FTC action in specified consumer fields. Otherwise, as bad as it is, there may be more to gain than to lose from case-by-case congressional intervention.

Soviet Ammonia and Afghanistan

When the demand for an internationally traded commodity is strong, the supply limited, and a shortage threatening, domestic buyers typically look abroad to fill the gap, and the government is urged to use export controls to keep scarce supplies at home. When the market turns, however, and supplies pile up, domestic producers plead for protection against "unfair" foreign competition, and the government is urged to impose import controls.

The latest example of this phenomenon involves anhydrous ammonia, a chemical used primarily for the production of fertilizer. Beginning in 1973, when market conditions were tight and spot prices soared from $90 to $400 per short ton, Occidental Petroleum Corporation agreed to furnish the U.S.S.R. with the facilities and continuing technical services needed to produce ammonia, and the U.S.S.R., in return, agreed to sell Occidental ammonia—up to a maximum of 2.7 million short tons a year—as well as urea and potash. Although the fear of a fertilizer shortage was rather short-lived, the agreement was not—it extends from 1978 through 1997. Imports from the U.S.S.R., initially viewed as a boon to the U.S. fertilizer industry and farmer, are now viewed as a bane, at least by U.S. producers and by the companies

that import ammonia from other countries.

In 1978, the Soviet Union—which had not formerly exported any ammonia to the United States—shipped about 300,000 short tons to this country, roughly equal to 2 percent of our domestic consumption. In 1979, in a weakening market for ammonia (the spot price dropped to less than a fifth of its earlier peak in mid-year), Soviet shipments expanded to an estimated 1 million short tons, about 5-1/2 percent of domestic consumption. Occidental Petroleum projects that this level will double in 1981.

In July 1979, a group consisting of domestic producers and firms that import ammonia from countries other than the U.S.S.R. petitioned the International Trade Commission for import relief under section 406 of the Trade Act of 1974. (This is a little used provision narrowly applicable to "the product of a communist country," but otherwise similar to section 201 under which domestic industries need only show that they have been damaged by a substantial increase in imports in order to obtain relief.) Blaming the ills of their industry on increased imports from the Soviet Union, they complained that industry employment had dropped from 4,700 in 1977 to 4,100 in the first half of 1979, the period during which imports from the U.S.S.R. were expanding rapidly. They also alleged that the profits of several companies were hurt by this buildup. In a three-to-two vote, the ITC ruled that Soviet ammonia had caused material injury to domestic producers and recommended that quotas be imposed—1 million short tons in 1980, 1.1 million in 1981, and 1.3 million in 1982.

December 12: President Carter rejected this recommendation in a memorandum dated December 12. His decision was a recognition of the fact that the domestic industry's problems are not primarily attributable to imports from the U.S.S.R. First, the industry overexpanded in response to the sharp run-up in price in the 1973–74 period. Second, production costs for domestic ammonia have risen considerably with the sharp increase in the price of natural gas, ammonia's main ingredient. Thus, artificially low prices for U.S. natural gas made production of ammonia in the United States advantageous prior to decontrol, but the comparative advantage has begun to shift to countries with more plentiful natural gas supplies as U.S. natural gas prices have approximately tripled over the last six years.

In announcing his decision, the President pointed out that granting the domestic industry some protection from Soviet competition would not significantly reduce U.S. imports, but would primarily result in shifting these imports to alternative foreign suppliers. While U.S. producers might pick up a small amount of the slack resulting from a ceiling on imports from the U.S.S.R., the extent of this substitution would be limited by the fact that some domestic ammonia plants are technologically obsolescent and some are located too far from where ammonia is processed into finished products.

Ammonia is a fungible commodity, traded and consumed throughout the world. Thus, given the adverse competitive position of the U.S. industry, a quota on imports from only the U.S.S.R. would have provided little benefit to the domestic industry. Mostly, it would have shifted a portion of industry profits from Occidental to the U.S. firms that import ammonia from other countries or produce it abroad—that is, from one firm that now accounts for roughly half the import market to the group of producers that accounts for the other half.

This reasoning implies, of course, that the quota's economic cost to the United States—higher prices for ammonia, fertilizer, and food, as well as allocative inefficiencies and increased energy dependence—also would have been small. Ammonia prices would probably have increased about 1 percent and fertilizer prices about 0.5 percent a year over the next four years, for a total cost of about $75 million (in 1978 dollars). Also, natural gas consumption would probably have increased to the Btu equivalent of about 2.7 million barrels of oil a year, only about 0.1 percent.

Despite these relatively small economic effects, the decision to reject the ITC recommendation was an important symbolic victory over protectionism in international trade. The facts in the ammonia case are a textbook reminder of the hazards of supply regulation: the inevitable time lags between identification of the market "deficiency" and application of the regulatory remedy, the ineradicable political tendency to favor one interest against another or against the greater but more diffuse interest of the society at large, and, most of all, the irrepressible fluidity of the market.

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Soviet Ammonia

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But economics is one thing, geopolitics another—and, as the new year began, U.S.–Soviet relations displayed a fluidity of their own. Under the legislative veto contained in the Trade Act, Congress had until March 6, 1980, to overturn the President's overturning of the ITC. And it became conceivable that it would do so, for reasons relating to the science pioneered by Machiavelli rather than by Adam Smith.

January 21: Shortly before press deadline for this issue, the President beat Congress to the punch—reversing his earlier action and limiting the importation of Soviet ammonia to 1 million short tons in 1980. In a proclamation issued on January 21, he stated that "recent events have altered the international economic conditions under which I made my determination that it was not in the national interest to impose import relief." Actually, the applicable statutory phrase (and the phrase used in the December 12 memorandum denying import relief) is not "national interest" but "national economic interest"; and the discrepancy suggests the basic question of whether the President may act under this provision of the Trade Act for geopolitical rather than domestic economic reasons. This question, however, is not a likely basis for a successful court challenge.

The President's latest action was apparently not an attempted second bite at the ITC's recommendation (which would be of dubious validity) but was based on a Trade Act provision that enables him to impose emergency import restrictions pending the outcome of a newly requested ITC investigation. Reportedly, he has made such a request—so it is back to the drawing board for the ITC. How ironic it would be if that body was convinced by the President's persuasive December memorandum and found no adverse effect on the domestic industry, thereby requiring termination of the import restriction! Clearly, this time around bad economics is good politics.

Wealthier Is Healthier

(*Continued from page 12*)

indices seem to be improving quite of their own volition—right up to the day before yesterday, indeed, and the latest official status report (*Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention,* 1979). These developments, naturally, are the result of forces operating in earlier decades, without vast governmental programs. Somehow, it seems almost perverse today for health to improve without a program aimed at that end.

Perhaps it is time to discuss whether, beginning now, spending more money on medical care not only would not help very much but would be a positive detriment to health. By focusing on buying health rather than living healthily, we probably end up with less of both.

The United States, to be sure, is rich enough to afford almost any additional medical program it wants, if that were all there was to it. But that is far from all. On the contrary, the purpose of diversifying sources of finance is to dissipate the financial effects so that their full impact cannot be felt in one place. The totals then become more difficult to control. Like the proposed "windfall" (really an excise) tax on domestic oil production, comprehensive national health insurance would in effect create hundreds of billions in "funny money" outside the normal budgetary disciplines. "Abracadabra"—and both a (nearly) balanced budget and huge additional expenditures are possible.

But billions more for medical care means less for innovation elsewhere. The secret of more health and safety lies in a richer life. By making ourselves poorer in order to stay healthier, we would invest less in the living from which unexpected improvement comes. We would lose the resiliency, the free-floating resources, to make use of change by coping with contingencies. What is at issue here is not some spooky "invisible hand" but a vibrant society learning through innumerable experiences how to enhance health and safety better than before. Fantastic fixed expenditures for medical care would institutionalize existing errors while reducing the prospects for future experimentation. The result would be not only a duller but a more dangerous, less healthy society.

This cannot be proved, because once opportunities are lost—opportunities we could not anticipate or we would already be taking advantage of them—it is not possible to rewind the reel of history and retrieve them. What we do not know *will* hurt us. But if we choose a path from which there is no return, an overmedicated and undersurprised American people will never find out. ■