FOREWORD

The *Journal* is privileged to publish an exceptional selection of articles in this first issue which combines both Spring and Fall issues of Volume 2. It is the first issue with contributions by academicians from China and Japan. It is also the first with contributions by members of the UCLA law faculty. And, finally, it is the first issue of the *Journal* to offer opposing views in a controversy, in this instance a controversy over the decision-making process of a U.S. government agency that may be brought before Congress at hearings later this Spring.

Before turning to brief summaries of the main articles I would like to express my personal and very deep appreciation of two people without whose extraordinary talents and good humored devotion to the *Journal* this issue most certainly would not now be in your hands. The two are Professor William Alford, faculty advisor, and Bruce Catania, Articles Editor and member of the Class of 1984. I would like also to thank Dean Susan Prager and Professor Arthur Rosett for their continuing interest and their personal encouragement of our efforts. And I am grateful to Maria Protti, last year's Editor-in-Chief, as well as Roger Rosendahl, Robert Nielsen, and Peter Watson, members of our Board of Advisors, for their helpful suggestions and support.

The thesis of Mr. Palmeter's lead article is that the anti-dumping and countervailing duty provisions of the Tariff Act of 1930 are designed to remedy injury caused by imports that are sold below their fair value or that benefit from subsidies, and that International Trade Commission decisions over 25 years have considered the *amount* of any margin below fair value or subsidy as a relevant factor in determining whether the imports had caused the injury. He contends that the Subsidies Agreement reached during the Tokyo Round of the Multilateral Trade Negotiations requires that the amount be taken into account in determining injury, and that Congress in its 1979 legislation implementing the Agreement made it clear it intended no change in Commission practice in this regard. Mr. Palmeter maintains that more recently the Commission has ignored its own precedent as well as congres-

sional intent, and has thereby placed the United States in violation of the Subsidies Agreement.

In response to Mr. Palmeter, Mr. Easton and Mr. Perry insist that there is a fundamental difference between the Commerce Department's calculations in antidumping investigations and in countervailing duty investigations, and that the purpose of the trade law provisions is not to remedy the injury to domestic producers but "merely to tax the amount of dumping and force foreign exporters to raise their prices . . . thus reducing or eliminating the dumping." Their contention is that in the case of countervailing duties the purpose of the trade law provisions "is to offset, or neutralize, any benefit received by a U.S. importer dealing with a subsidized foreign manufacturer exporter."

Professor Alford, who himself has earned a reputation as an authority on Chinese legal development sets in its proper context the special article on Chinese criminal law by Professor Zhu Qiwu and at the same time gives some details of Professor Zhu's distinguished career as one of China's foremost legal scholars.

Professor Zhu writes that China's new Criminal Code and Code of Criminal Procedure are the first comprehensive criminal codes in the history of the People's Republic of China and, as such, are "of prime importance in the development of Chinese legal history." He indicates that the codes, based on socialist legal principles, have already begun to foster "the masses' . . . goals of maintaining social order, consolidating the dictatorship of the people's democracy, and ensuring socialist modernization."

A joint teaching program by an American law professor, Arthur Rosett, and a Japanese psychologist-anthropologist, Professor Hiroshi Wagatsuma, is the source of an enlightening comparison of Japanese and American attitudes towards business relationships. Despite a century of exposure to "lawyers' thinking" the U.S. business community still does not fully accept the rules of contract, often preferring, as in many other countries, to rely on a handshake or "common sense honesty and decency"—with disputes frequently settled without reference to the contract, or to potential or actual legal sanctions. Both the American and Japanese legal cultures have found themselves in a "state of tension" between their formal statements of contract law and actual practices, and a preference for common sense over legal rules has been a "strong motivation for the growing popularity of commer-

cial arbitration. . . ." American commercial law arose through a lawyer-dominated process of case decision in relationships that had gone wrong. It emphasizes the "competitive and antagonistic dimensions" rather than the cooperative and supportive aspects of business relationships. However, the "so-called Japanese attitude toward contract is not essentially different from that prevalent among American businesspersons. . . . The difference is that in the West contract is used to define rights of the parties . . . when good-will and trust . . . have broken down, while the Japanese tend to insist upon the continuing effectiveness of good-will and trust in every situation."

Professor Beer outlines the "postwar revolution of freedom" in Japan which resulted in adoption of the present constitution guaranteeing to each citizen for the first time in Japanese history "the justiciable right to express himself or herself without improper interference." Orders issued in 1945 by the Supreme Command for Allied Powers (SCAP) gave "unprecedented . . . legitimacy to freedom of expression, and might be reckoned among Japan's most precious constitutional documents even though issued by foreign conquerors." Today Professor Beer sees the status of freedom of expression in Japan as "intimately linked with memories of unquestioning devotion to the emperor" and the harsh militarism of pre-World War II and raises the question whether there may be a danger to freedom of expression in Japan connected with pressures by the United States for Japan's rearmament.

Professor Burnett uses the case of a large company which exerted pressure on the government for protection against steel imports as a jumping off point for a detailed analysis of Australia's system of public inquiry in the administration of trade regulations. She is concerned that the steel crisis "demonstrates that when faced with conflicting domestic and international interests the Government is able to abuse the public inquiry process so as to avoid taking any decision," but she believes the country is moving in the right direction of "allowing all elements of the domestic economy, as well as the exporters of goods to Australia, to participate in and to know the reasons for decisions on regulatory trade measures."

Mr. Rhoades offers an encyclopedia of finance and tax information for potential investors in a Pacific Basin enterprise ranging from advice on possible sources of initial funding and choice of corporate structure to a discussion of treaty considerations. Countries in the region with

whom the United States has income tax treaties are Japan, Korea, Australia, New Zealand and the Philippines. More than half of all U.S. possessions are in the Pacific Basin; they include Guam, the Northern Marianas, the Marshall Islands, the Federated States of Micronesia, and Palau. Taxation of U.S. possessions is covered in detail. Mr. Rhoades also discusses financial aspects of operating in Hong Kong, Singapore and Vanuatu. Despite political uncertainty because of the PRC's announced intention to exercise sovereignty over the New Territories at the end of the British lease, Hong Kong remains "the seat of commerce for the Far East," and is frequently used as a corporate tax haven. According to Mr. Rhoades, as a challenger to Hong Kong for commercial supremacy, Singapore's "only drawbacks" are its weather and its tax structure.

Finally, a word about coming attractions.

Our next issue will have as its primary focus the long term energy supply potential of the Pacific Rim countries, and will deal with some of the legal problems connected with exploration and production activities of multinational corporations as well as territorial jurisdiction disputes among some of the nations most involved. We also call your attention to two special sections that will be part of the *Journal* beginning with the next issue: one is a "Letters to the Editor" page; the other is the "Asian Law Forum," explained in some detail at page 201.

We look forward to receiving letters and information for the new sections, and invite you also to submit articles for consideration for the Spring and Fall 1984 issue.

Jean M. Tigerstall

Editor-in-Chief