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## Chapter 3: Selling U.S. Products and Services

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### Using an Agent or Distributor

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Establishing a direct presence in Japan is the best way to penetrate the Japanese market, but this can be an extremely expensive strategy. The use of agents/distributors is a more realistic marketing strategy for a small or medium-sized U.S. firm, but this approach requires great care in the selection of the representative.

Distributors in Japan usually cover a specific territory or industry. Import agents are often appointed as sole agents for the entire country (although there is no statutory requirement that this be done). In some cases exclusivity may be necessary to ensure a strong commitment by the Japanese agent towards expanding sales. But under no circumstances should a U.S. company be pressured into handing over control of the whole market if there is doubt as to the ability or willingness of the Japanese company to develop the entire market. Regional exclusivity, a limited term of representation, minimum sales, or qualitative indicators of sales efforts are good strategies as a safeguard in exclusive agency contracts.

While the Japanese Fair Trade Commission has guidelines applicable to exclusive agency contracts, there are no statutory damages required upon termination of an agency contract. Given the close-knit nature of business circles and the traditional wariness towards foreign suppliers, replacing a Japanese agent or distributor could cause reputation problems if not handled in an extremely sensitive manner. A U.S. company should at all costs avoid being viewed as lacking adequate commitment to Japanese business relationships. Japanese agents may request “parting compensation” in the event the foreign exporter decides to dissolve a business relationship. Since this is a common practice domestically, U.S. companies should address this eventuality prior to executing a contract.

U.S. firms interested in the Japanese market are cautioned against trying to use a list of importers as a basis for “cold calls” on prospective agents. The Japanese prefer to do business with someone only when they have been properly introduced and have met face-to-face. To help dispel reluctance on the Japanese side, an introduction by a “go-between” typically serves to vouch for the reliability of both parties. Appropriate third parties for such introductions include other Japanese firms, U.S. companies that have successfully done business in Japan, banks, trade associations, chambers of commerce, the U.S. Department of Commerce and the U.S. Commercial Service in Japan (CS Japan). U.S. state representative offices in Japan, JETRO, the American Chamber of Commerce in Japan (ACCJ), and Japanese Government ministries can also offer assistance.

U.S. companies should be selective in choosing a Japanese business partner. Credit checks, a review of the Japanese company's industry standing and existing relations with Japanese competitors, and trust building are all part of the process. Many problems can be avoided by carrying out comprehensive and professional due diligence. CS Japan can help U.S. companies find business partners in Japan. Find out how by visiting [www.buyusa.gov/japan/en/partner.html](http://www.buyusa.gov/japan/en/partner.html).

Part of the difficulty in choosing a Japanese agent is assuring that the agent will devote sufficient attention to expanding the market share of the U.S. product. A U.S. company should probably avoid a distributor that targets only limited, high-price niches; is compromised by strong ties to one particular industry group (*keiretsu*); fails to compete directly with established Japanese products; or is not prepared to pursue volume sales for the U.S. exporter. Also, companies should be wary of distributors that co-handle competitors lines, or products that are complimentary in nature and could present conflicts of interest for the distributor.

Another important factor that merits consideration in the Japanese market is sales commissions paid to agents and distributors. Under an agency contract, the agent normally sells the product to the customer “back-to-back,” at the same price as that paid to the supplier. The supplier then pays a sales commission to the agent at the percentage provided for in the agency contract or agreement. Under a distributorship contract, the supplier sells the product to the distributor, who is then free to add to the purchase price whatever markup it chooses in determining the sales price to the customer. Commission rates vary according to the product and contract terms. Generally speaking, sales commissions range from 10 to 20 percent for “spot” (one-time or irregular) transactions, and from 5 to 10 percent for regular, ongoing business transactions. In the case of bulk materials (*e.g.*, iron ore or coal), however, commission rates are much lower, in the neighborhood of 1 to 3 percent. In the case of medical, laboratory, and scientific analytical instruments, commission rates typically are much higher, in the neighborhood of 20 percent or even higher.

Occasionally, an American exporter deems it necessary, for various reasons, to terminate an existing distributor relationship with an importer in Japan. In such cases, we believe it is essential that the American company not needlessly alienate its existing partner and confuse its current end-users by seeking a new agent or distributor. Japan's business world is small and relatively concentrated, both politically and economically. Business relationships are formed, conducted, nurtured, and ended with an unusual degree of attention to appearances and decorum. Extreme caution and diplomacy are

therefore warranted if an overseas company wishes to sever its relationship with its existing Japanese agent or distributor.

Once an agent/distributor agreement is signed and the American company's products gain a foothold in the Japanese market, the American company may want to consider establishing a representative office in Japan (see below) to support the distributor's sales and marketing efforts and to facilitate communications with U.S. company headquarters. A technical engineer is often best suited for this role because such a person understands product capabilities and end-user requirements. This is, of course, more of a long-term consideration, but one that American companies may wish to consider in putting together their strategic mid- to long-term plan for Japan.

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U.S. companies may wish to carefully examine the Japanese Ministry of Economy, Trade & Industry's (METI) programs for promoting foreign investment into Japan. Programs include loans available through the Japan Bank for International Cooperation and the Development Bank of Japan. Entry-level business-support programs are provided by the Japan External Trade Organization (JETRO) as well as by some municipal and prefectural governments. Current information on investing in Japan, establishing an office, and other JETRO programs for foreign businesses can be found on JETRO's website at [www.jetro.go.jp/en](http://www.jetro.go.jp/en). Please also review Chapter 6 of the Country Commercial Guide under the section "Investment Climate." Finding suitable local labor is also a concern for U.S. companies seeking to establish an office in Japan. There are a number of executive search firms in Japan that can help address this important issue. For a list of some of these firms, please visit the website for the Commercial Service in Japan, [www.buyusa.gov/japan/en](http://www.buyusa.gov/japan/en) or the American Chamber of Commerce in Japan's website [www.accj.or.jp](http://www.accj.or.jp).

## **Franchising**

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The latest industry statistics available (from 2006) indicate that the number of franchise chains in Japan was 1194: up 4.2%, or 48 chains, from 2005. There were a total of 235,440 stores and outlets, up 0.4%, or 951 stores/outlets, from 2005. The aggregate size of the franchise market in 2006 was 19,603.6 billion yen (USD 178 billion at an exchange rate of USD 1 = 110.11 yen), compared to 19,388.8 billion (USD 176.1 billion) in 2005. Approximately 38 percent of total sales at franchise outlets are from convenience stores and about 21 percent from food service chains.

American-style franchising has heavily influenced the development of Japan's franchise industry since the early 1970s. Although Japanese consumers are generally receptive to U.S. franchise concepts, products and services must be adjusted to local tastes and preferences to ensure success. U.S. franchisers are more often successful when they seek either a master franchisee or a joint venture partner to develop the market in Japan.

Identifying the right business partner in Japan requires time and effort. It can be difficult to find companies that are willing to invest in master franchise rights if they do not believe there is a market or growth potential for the business concept in Japan.

Therefore, prudent market research and long-term commitment are required for foreign companies to launch franchise businesses in Japan.

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Direct marketing in Japan, which includes mail order, telemarketing, direct response television, and Internet sales, is still modest by U.S. standards. However, direct marketing is increasing, particularly in the case of Internet sales. Consumers are beginning to shop through their mobile phones, and Internet sales and mail order can be attractive methods for suppliers attempting to reach Japanese consumers while bypassing traditional distribution channels.

Shopping from foreign catalogs, whether hard copy or on the web (generally referred to as “personal importing”), surged in the mid-1990s due to the novelty of the concept, a very strong yen, and a growing appreciation of foreign consumer goods. Although providing adequate customer service and handling product returns challenged those firms that did not have in-country representation, many U.S. companies enjoyed an enormous expansion of orders from Japan. Since 1996, however, the relative strengthening of the dollar and the passing of the “fad” component of the boom has caused the market to cool considerably. Also, the recent recovery of Japanese economy has not been reflected in wages and salaries, and consumers’ propensity to spend has not increased proportionately. Nevertheless, opportunities still exist for companies that can offer Japanese consumers quality products with unique attributes.

U.S. companies must overcome a number of challenges such as language, international shipping costs, customs regulations, tariffs, and other issues when marketing directly to a Japanese consumer (e.g., sizes in metric). In addition, U.S. companies should be aware of the Personal Information Protection Law, implemented in 2005, which restricts the sharing of personal data. It can be difficult for U.S. catalogers to obtain effective mailing or contact lists.

U.S. companies aiming to enter this market should be prepared to make an investment in service and in what is generally referred to as direct marketing infrastructure. A representative in Japan can act as a liaison with the U.S. supplier to handle receipt of claims, customs clearance, and provide assistance in the preparation of Japanese-language materials. A local representative can also manage warehousing and returns.

In the case of “personal imports” to which regulatory systems like official import permits do not apply, goods must be shipped directly from the United States. Even in the case of personal imports, however, U.S. companies should note that the promotion of certain items (cosmetics, supplements, etc.) by local representatives is subject to the same laws and restrictions as products that are commercially imported.

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U.S. companies often consider joint ventures or licensing agreements when considering entering the Japanese market. For the latest information on regulations and procedures for establishing an operation in Japan, please visit the JETRO website at [www.jetro.go.jp/en](http://www.jetro.go.jp/en).

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Although a vast majority of U.S. commercial exports to Japan do not need export licenses, the export of any form of technical data from the United States can be subject to U.S. export control laws. In such a case, a thorough review of the U.S. Department of Commerce's Export Administration Regulations (EAR) should precede the signing of any licensing agreement. To learn more about the EAR, please visit the following web sites:

Bureau of Industry & Security: [www.bis.doc.gov](http://www.bis.doc.gov)

Government Printing Office's EAR database: [www.access.gpo.gov/bis/ear\\_data.html](http://www.access.gpo.gov/bis/ear_data.html)

## **Selling to the Government**

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On January 1, 1996, Japan implemented the WTO Agreement on Government Procurement in an effort to expand opportunities for foreign firms and increase international competition in government procurement in Japan. The agreement extended coverage to include the procurement of services as well as procurement throughout Japan by what are referred to as "sub-central government entities." These entities include all prefectural (regional) governments in Japan, major cities and designated municipalities, and a host of other quasi-governmental agencies, corporations, companies and authorities.

Government procurement contracts covered by the agreement must have a value not less than the thresholds (denominated in special drawing rights or "SDRs") specified by the agreement, and include the procurement of products and services by purchase, lease, or rental by the agencies and organizations subject to the agreement. Under the agreement, the specified threshold for procurement by central government entities is 130,000 SDRs (except for construction and architectural, engineering and other technical services). As a voluntary measure, Japan issued SDR thresholds beyond those specified in the agreement, e.g., 100,000 SDRs for procurement by central government entities (again, except for construction and architectural, engineering and other technical services). For sub-central government entities, with the same exceptions as above, Japan's voluntary threshold is 200,000 SDRs.

There are three types of government tendering procedures in Japan covered by the new agreement: 1) open tendering; 2) selective tendering; and 3) limited or single tendering. Under an open tender, the procuring entity publishes an invitation for qualified suppliers to participate in the tendering process. Contracts are awarded to the bidder that offers the greatest advantage in terms of price. Selective tendering is done in a case when open tendering is not necessary because there is only a small number of suppliers that could participate (due to the nature of the contract), or when open tendering is otherwise regarded as inappropriate. In this case, the procuring entity designates those companies it considers capable from a list of qualified suppliers and invites them to bid. Again, the contract is awarded to the bidder with the best price advantage. Limited or single tenders are used in a variety of cases for purposes of awarding contracts without resorting to open competition. Such cases might include instances where products can not be obtained through open or selective procurement procedures, where there has

been an absence of bids in response to a public notice, where it has been determined there is a need for protection of exclusive rights such as patents, or where the procurement is of extreme urgency.

Open tender and selective tender invitations are published in Japan's official (central) government procurement gazette or *Kanpō* — [kanpou.npb.go.jp](http://kanpou.npb.go.jp) — or in an equivalent regional-level or local publication. The procuring entity publishes the invitation to tender at least 50 days (40 days is required by the agreement) in advance of the closing date for receipt of bids. In order to increase access opportunities for foreign suppliers, as a voluntary measure, many procuring entities publish notices on the use of limited (closed) tenders at least twenty days in advance of the awarding of a contract. When the tender is announced on open bids, the type and quantity of products, time limits set for submission of bids, and names and contact data of the procuring entity are published within the announcement in English. Notices on selective tendering also contain the requirements to be designated to participate in the tender. It is important to read the tender notice carefully (the English-language text is mixed in with the Japanese language text), and most companies find it useful to directly contact the procuring entity with any specific questions before a tender is submitted. Japan's Ministry of Foreign Affairs hosts a Government Procurement Seminar every April where central government procuring entities explain their procurement plans for the fiscal year. Individual ministries sometimes follow this with their own seminars as well. Notice of these meetings can also be found in the *Kanpō* gazette. U.S. suppliers can find information about Japanese government procurement on the Japan External Trade Organization (JETRO) web site at [www.jetro.go.jp/en/matching/procurement](http://www.jetro.go.jp/en/matching/procurement), or on the Ministry of Foreign Affairs web site ([www.mofa.go.jp/policy/economy/procurement/q-a.pdf](http://www.mofa.go.jp/policy/economy/procurement/q-a.pdf)), which has a detailed list of contact points for entities covered by the agreement as well as a list of related websites.

Potential suppliers must first be qualified by the procuring agency and registered on the tendering agency's permanent list of qualified suppliers. Each procuring entity in Japan specifies the qualifications required of any potential supplier participating in open or selective tenders. Procuring entities are allowed to review a company's capacity to implement a contract, including the scale of business and past business performance. In most cases, Japanese subsidiaries, agents, or distributors of a U.S. company can register on behalf of the firm. Documents required for qualification are set out in the public notice, but typically include: an application form, registration certificate, company history, financial statements, and tax payment certificate. The qualification is usually valid for one to two years.

Sealed bids must be submitted to the designated place by the closing date and time specified in the tender notice. Although a 5 percent guarantee fee is stipulated, payment of the fee is usually waived since those participating are normally pre-qualified. If there are tenders made by unqualified suppliers or in violation of the tender requirements, the procuring entity will rule them invalid and notify the unsuccessful bidder. The contract is normally awarded to the lowest qualified bid and bidders are informed of the result in writing by the procuring entity. Pursuant to the 1996 agreement, Japan has established a mechanism to process complaints about procurements by entities other than sub-central government entities. Complaints by qualified bidders may be filed with the Secretariat of the Board in the Office for Government Procurement Challenge System (CHANS), Coordination Bureau, Cabinet Office. For additional information, please visit [www5.cao.go.jp/access/english/chansmaine.html](http://www5.cao.go.jp/access/english/chansmaine.html).

According to the Yomiuri Newspaper, The Japanese Ministry of Defense (MOD) is to establish project teams to supervise its procurement and use of military equipment -- from development to disposal -- according to a draft of reforms being studied by the MOD in the wake of a bribery scandal involving a former top official.

<http://www.yomiuri.co.jp/dy/national/20080216TDY04304.htm> .

In view of ongoing MOD investigations and deliberations, U.S. companies seeking to do business in the defense sector in Japan are advised to retain competent legal and other professional expertise in this important and evolving sector.

## **Distribution and Sales Channels**

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Distribution channels in Japan are going through a period of consolidation. Many of the traditional channels have been streamlined, yet complexities still exist. Channels vary significantly between consumer goods and industrial products. For detailed information on distribution channels, it is best to contact a Commercial Specialist from the Commercial Service in Japan to discuss the specific channels for individual products and sectors. For a contact list, please visit the Commercial Service Japan website: [www.buyusa.gov/japan/en](http://www.buyusa.gov/japan/en)

## **Selling Factors/Techniques**

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As in the U.S., pursuing sustained personal contact directly with customers is an excellent sales technique for market entry and expansion in Japan. Having a visiting U.S. company representative accompany the firm's Japanese agent or distributor on visits to existing or potential customers strengthens the potential for sales, and such joint sales calls demonstrate a commitment to clients and are an excellent way to obtain market feedback.

To increase their chances for success, learning how to negotiate and maintain relationships with Japanese can significantly increase a U.S. company's chances for success in the market. Japanese language skills and familiarity with the nation's culture and etiquette can be invaluable. Be prepared to attend after-hours social events: these informal gatherings go a long way towards establishing mutual trust and understanding between new partners. It has been said that many business deals in Japan are made "after five," though this does not mitigate the important role that price, quality and after-sales service play in making an export sale.

Initial contact between Japanese firms is usually formal and made at the executive level, with more detailed negotiations often delegated to the working level. Typically, the first meeting is to become acquainted, to establish the interest of the calling party, and to allow both sides an opportunity to size each other up. Don't expect too much from a first meeting — sometimes the actual business subject may be overtaken by more mundane topics. A series of meetings with a large number of Japanese company representatives is common, as part of the "sizing up" process. Business negotiations may proceed slowly, as the Japanese side might prefer to avoid an agreement rather than being criticized later for making a mistake.

While many Japanese business executives speak some English, a skilled and well-briefed interpreter is essential to prevent communication problems. A good interpreter is worth the extra money and firms who choose to skimp on or forego this expense significantly reduce their odds of success. Though there are some U.S. firms that do business in Japan without a signed contract, written contracts between U.S. and Japanese firms is an accepted practice. Contracts satisfy tax, customs, and other legal requirements. Japanese companies prefer shorter and more general contracts as opposed to lengthy, detailed documents spelling out every right and obligation in detail. Again, personal contact and relationships are important and a contract should be viewed as just one element of a broader effort to create a mutual understanding of obligations and expectations.

## **Electronic Commerce**

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According to statistics published in May 2007 by the Ministry of Economy, Trade and Industry (METI), the market size of business-to-business (B2B) electronic commerce in Japan in 2006 was 148 trillion yen (USD 1.3 trillion). The industry sectors that were the largest users of B2B electronic commerce were manufacturing (83 trillion yen or USD 714 billion), followed by wholesalers (42.2 trillion yen or USD 363 billion), and finance (6.8 trillion yen or USD 58 billion). The same report noted that the market size of the business-to-consumer (B2C) electronic commerce market in 2006 was 4.4 trillion yen (or USD 37.8 billion) and identified the largest users of B2C electronic commerce as IT / telecommunications (1.19 trillion yen or USD 10.2 billion), general retail (986 billion yen or USD 8.5 billion), electric appliances (571 billion yen or USD 4.9 billion), and travel and accommodation (508 billion yen or USD 4.4 billion).

Japanese, especially younger consumers, are increasingly using state-of-the-art mobile telephones to access the Internet, check information, buy tickets and goods, listen to music, play games, and even watch television. In 2006, B2C market shopping related mobile e-commerce (not including content such as music and games) accounted for 562 billion yen (USD 4.8 billion), according to a Ministry of Internal Affairs and Communication report. This indicates a 38 percent increase from the previous year and represents 12 percent of the total B2C e-commerce market.

Mobile e-commerce is expected to continue growing rapidly as the use of QR codes and flat fee systems become more popular. The easy payment/collection methods that mobile phones provide will further contribute to this growth. U.S. companies that wish to expand their Internet sales transactions into the mobile market should select products and construct new web pages that fit nicely on the small screens used by mobile telephones as aspects of their B2C e-commerce strategy.

In 2007, the Next Generation Electronic Commerce Promotion Council of Japan, METI, and Kao Corporation jointly published a "Survey on the Current Status and market Size of Electronic Commerce for 2006" at:

[http://www.meti.go.jp/policy/it\\_policy/statistics/outlook/H18EC\\_070330.pdf](http://www.meti.go.jp/policy/it_policy/statistics/outlook/H18EC_070330.pdf)

(Note: the above document is only available in Japanese)

## **Trade Promotion and Advertising**

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Unless a U.S. company is setting up operations directly in Japan, the company's agent or distributor in Japan will likely execute the advertising and marketing effort. It is quite expensive to advertise in Japan. Because of this, local firms often look for some type of cooperation from the incoming company. Willingness to support this effort sends a strong signal of commitment to the market.

Not all companies can afford to place advertisements in Japan's major national daily newspapers or commercials on Japanese television. Regional and local newspapers and television stations and daily sports newspapers are less expensive and might make sense for a product with strong potential in a specific region. A more affordable option for small- to medium-size or new-to-market U.S. companies might be advertising in some of Japan's 2250 weekly or monthly magazines. These publications often represent a cost-effective means to reach a specific target consumer — whether gourmet or gardener, cyclist or camper. For industrial and commercial products, Japan's many industrial daily, weekly or monthly newspapers and trade journals might offer the best advertising option.

Most of Japan's broadcast and print media do not deal directly with advertisers but go through Japan's top five advertising agencies: Dentsu, Hakuhodo, Asatsu, Tokyu Agency International, and NTT Advertising. Generally, mood or image advertising achieves the best results. Hard sell, comparative, or combative advertising used to be considered bad taste and counterproductive, but comparative advertising is becoming more mainstream in an increasingly competitive and tight economy.

Japan's railways, as the primary transportation option for commuters in major cities, carry more than 21 billion passengers every year. So, transit advertising should not be overlooked. Transit advertisements can be found inside commuter rail cars, buses, and in stations. Advertisements inside trains and buses include hanging flyers, framed posters, stickers, and flat-panel video. As with other media and outlets, the major advertising agencies control space.

U.S. exporters can benefit from Japan's extensive trade event circuit: not only in Tokyo and Osaka, but also in the huge regional economies and industrial centers where many of Japan's international conferences, seminars, and trade shows take place. U.S. Department of Commerce-sponsored trade shows and trade missions, as well as events that U.S. states and industrial organizations sponsor are an excellent means of gaining exposure in the Japanese market. For a listing of U.S. Department of Commerce supported events in Japan, please visit our website: [www.buyusa.gov/japan/en](http://www.buyusa.gov/japan/en)

## Pricing

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Tough economic times have made price an increasingly important consideration for Japanese consumers. Traditionally, many people made their buying decisions based on a product's attributes, quality, and brand name and they were willing to pay more for superior quality. However, Japanese consumers are now more price conscious and notions such as bargains and value have become mainstream. If an imported product can be purchased more cheaply than a domestic product, consumers will be interested. This has proven to many Japanese that U.S. products can be affordable and of a quality that's similar or even superior to Japanese goods.

This recent ability to compete on price has opened doors for U.S. products. However, landed cost is only one part of a total pricing scheme and should not be the only consideration for U.S. firms interested in exporting to Japan. Distribution mark-ups often cause imports to price at levels far higher than comparable domestic products. For instance, shipping costs between the port of Osaka and Tokyo have been shown to be three times higher than shipping costs from the U.S. West Coast to Osaka. A good example is imported U.S. apparel products, where street prices often are three to four times FOB.

Japanese manufacturers traditionally set prices at each level of the distribution chain and enforce compliance using complicated rebate systems. This price maintenance has come under pressure from consumers who are demanding lower prices and from manufacturers who themselves find the rebate system burdensome. As distribution practices have undergone reform, costs have been coming down and distributors have gained additional flexibility in selecting and purchasing items.

The pricing structure of imported goods varies according to the types of distribution channels and services importers or wholesalers provide (e.g., inventory, advertisement costs, packaging costs, financing, acceptance of unsold/returned goods, etc). It is a multi-layered system with established lines of product flow. In recent years, more and more middlemen have either been eliminated or forced to cut prices.

As Japanese consumers have become more price-sensitive, markups along the various distribution stages have tended to become smaller. There are now some retailers who import products directly in order to offer lower retail prices. But U.S. suppliers should understand that retailers usually import smaller quantities. And other importers and wholesalers usually are uninterested in representing products that retailers import directly.

Finally, U.S. exporters should also consider yen/dollar fluctuations in their product pricing and sales strategies.

## **Sales Service/Customer Support**

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Excellent product service and customer support throughout the sales cycle are highly important in Japan. This includes establishing a close working relationship with and long-term commitment to a U.S. exporter's potential Japanese partners. Every effort should be made to answer technical questions in detail, to ensure delivery dates are met, and that other issues regarding shipments are absolutely clear. Problems most often arise from misunderstandings, lack of communication, language difficulties, and differing business practices.

The arrival times and condition of shipments are critical. Shipments should arrive on time, they should be well packed, and they must not be damaged upon arrival. Customs documentation should be complete and accurate; if it is not, the entry of the merchandise could be delayed or, in certain cases, the merchandise might be returned to the sender. Japanese buyers are highly concerned with the quality of packing and have used poor packaging as an explanation for market entry problems. Missed deadlines and goods damaged through poor shipping practices will lead to lost business. Many U.S. companies that have succeeded in Japan have established a local presence

to handle sales and to provide customer support and service. In some cases, local agents or distributors can provide this support.

## Protecting Your Intellectual Property

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### Introduction

Several general principles are important for effective management of intellectual property rights in Japan. First, it is important to have an overall strategy to protect IPR. Second, IPR is protected differently in Japan than in the U.S. Third, rights must be registered and enforced *in Japan*, under local laws. Companies may wish to seek advice from local attorneys or IP consultants. The U.S. Commercial Service will provide a list of local lawyers upon request.

It is vital that companies understand that intellectual property is primarily a private right and that the US government generally cannot enforce rights for private individuals in Japan. It is the responsibility of the rights' holders to register, protect, and enforce their rights where relevant, retaining their own counsel and advisors. While the U.S. Government is willing to assist, there is little it can do if the rights holders have not taken these fundamental steps necessary to securing and enforcing their IPR in a timely fashion. Moreover, in many countries, rights holders who delay enforcing their rights on a mistaken belief that the USG can provide a political resolution to a legal problem may find that their rights have been eroded or abrogated due to doctrines such as statutes of limitations, laches, estoppel, or unreasonable delay in prosecuting a law suit. In no instance should USG advice be seen as a substitute for the obligation of a rights holder to promptly pursue its case.

It is always advisable to conduct due diligence on partners. A good partner is an important ally in protecting IP rights. U.S. companies may wish to consider ordering an International Company Profile (ICP) on prospective partners. For information on the ICP and other services available from the Commercial Service in Japan, please visit our website: [www.buyusa.gov/japan/en](http://www.buyusa.gov/japan/en). Projects and sales in Japan require constant attention. Work with legal counsel familiar with Japan laws to create a solid contract that includes non-compete clauses, and confidentiality/non-disclosure provisions.

It is important that small and medium-size companies understand the importance of working together with trade associations and organizations to support efforts to protect IPR and stop counterfeiting. There are a number of these organizations, both Japan or U.S.-based. These include:

- The U.S. Chamber of Commerce and the American Chamber of Commerce in Japan
- National Association of Manufacturers (NAM)
- International Intellectual Property Alliance (IIPA)
- International Trademark Association (INTA)
- The Coalition Against Counterfeiting and Piracy
- International Anti-Counterfeiting Coalition (IACC)
- Pharmaceutical Research and Manufacturers of America (PhRMA)
- Biotechnology Industry Organization (BIO)

IPR Resources

A wealth of information on protecting IPR is freely available to U.S. rights holders. Some excellent resources for companies regarding intellectual property include the following:

- For information about patent, trademark, or copyright issues -- including enforcement issues in the US and other countries -- call the STOP! Hotline: 1-866-999-HALT or register at [www.StopFakes.gov](http://www.StopFakes.gov)
- For more information about registering trademarks and patents (both in the U.S. as well as in foreign countries), contact the US Patent and Trademark Office (USPTO) at: 1-800-786-9199.
- For more information about registering for copyright protection in the US, contact the US Copyright Office at: 1-202-707-5959.
- For US small and medium-size companies, the Department of Commerce offers a "SME IPR Advisory Program" available through the American Bar Association that provides one hour of free IPR legal advice for companies with concerns in Brazil, China, Egypt, India, Russia, and Thailand. For details and to register, visit: [http://www.abanet.org/intlaw/intlproj/iprprogram\\_consultation.html](http://www.abanet.org/intlaw/intlproj/iprprogram_consultation.html)
- For information on obtaining and enforcing intellectual property rights and market-specific IP Toolkits visit: [www.StopFakes.gov](http://www.StopFakes.gov) This site is linked to the USPTO website for registering trademarks and patents (both in the U.S. as well as in foreign countries), the U.S. Customs & Border Protection website to record registered trademarks and copyrighted works (to assist customs in blocking imports of IPR-infringing products) and allows you to register for Webinars on protecting IPR.
- The U.S. Commerce Department has positioned IP attachés in key markets around the world. For example, you can contact the IP attaché who covers China at [usptochina@mail.doc.gov](mailto:usptochina@mail.doc.gov).
- Other useful IP office contact information can be found at: <http://www.wipo.int/directory/en/urls.jsp>

IPR Climate in Japan: See [Protection of Intellectual Property Rights](#) under Chapter 6: [Investment Climate](#).

## Due Diligence

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A U.S. company resident in Japan is not legally required to use a Japanese attorney for filings, registrations, contracts or other legal documents, which can be prepared by in-house staff, but retaining a competent Japanese attorney (*bengoshi*), patent practitioner (*benrishi*), or other legal professional is a practical necessity. A U.S. company not resident in Japan should also retain competent Japanese counsel. Patents and trademarks must be filed through a Japanese agent, which should be a licensed attorney or patent practitioner.

In recent years, Japanese industry has been shaken by a record number of bankruptcies. Japanese commerce has also witnessed an unprecedented number of mergers and acquisitions. It is always advisable to conduct due diligence on partners. U.S. companies may wish to consider ordering an International Company Profile (ICP) on prospective partners. For information on the ICP and other services available from the Commercial Service in Japan, please visit our website: [www.buyusa.gov/japan/en](http://www.buyusa.gov/japan/en). Projects and sales in Japan require constant attention. Work with legal counsel familiar

with Japan laws to create a solid contract that includes non-compete clauses, and confidentiality/non-disclosure provisions.

The U.S. Embassy in Tokyo continues to see trade dispute cases of all kinds. It has become more common for small- and medium-sized Japanese trading companies to run into payment problems.

Importers, wholesalers and distributors without real estate assets may find it more difficult to obtain trade financing in the present environment. Banks in Japan have become less inclined to provide credit to small- and medium-sized enterprises of all types. Larger companies with excessive debt may also experience problems obtaining financing.

As a result of these concerns, American companies are well advised to perform due diligence procedures and check the *bona fides* of their Japanese agents and/or customers. To address this need, the U.S. Commercial Service in Japan provides the International Company Profile service. For more information about this service, please visit: [www.export.gov/salesandmarketing/ICP.asp](http://www.export.gov/salesandmarketing/ICP.asp)

## Local Professional Services

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CS Japan's website features lists of business service providers in different fields who may be of assistance to U.S. exporters in Japan. Although these lists are not comprehensive, and inclusion does not constitute an endorsement or recommendation by the U.S. Commercial Service or by the U.S. Government, they are a useful starting point for firms that need professional services in Japan. Please click on the following links and you will be taken straight to the list of business service providers that are of interest to you:

- [Accounting, Auditing, and Tax Services](#)
- [Advertising](#)
- [Business Administration Services](#)
- [Business Consulting](#)
- [Computer and Internet Services](#)
- [Distributors, Sales Agents, and Importers](#)
- [Education and Training Services](#)
- [Engineering Services](#)
- [Entertainment Services](#)
- [Hotels and Meeting Facilities](#)
- [Human Resources](#)
- [Insurance Services](#)
- [Legal Services](#)
- [Market Research](#)
- [Marketing, Public Relations, and Sales](#)
- [Patent and Trademark Law Services](#)
- [Real Estate Services](#)
- [Relocation Services](#)
- [Restaurants and Catering](#)
- [Security and Personal Safety](#)

- Telecommunications
- Trade Show and Exhibition Services
- Translation and Interpretation
- Transportation, Freight Forwarder and Storage Services
- Travel Facilitation
- Other Business Services

or visit our web site directly at [www.buyusa.gov/japan/en/bsp.html](http://www.buyusa.gov/japan/en/bsp.html)

## Web Resources

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Information on investing in Japan, establishing an office, and other programs for foreign businesses:

Japan External Trade Organization (JETRO)  
[http://www.jetro.go.jp/en/invest/setting\\_up/](http://www.jetro.go.jp/en/invest/setting_up/)

Information on doing business in Japan:

American Chamber of Commerce in Japan (ACCJ)  
[www.accj.or.jp/accj.or.jp/content/01\\_home](http://www.accj.or.jp/accj.or.jp/content/01_home)

Venture Japan: Doing Business in Japan  
 How to Succeed in the Japanese Market  
[www.venturejapan.com/index.htm](http://www.venturejapan.com/index.htm)

Information on business service providers in Japan:

U.S. Commercial Service, American Embassy, Tokyo  
[www.buyusa.gov/japan/en/bsp.html](http://www.buyusa.gov/japan/en/bsp.html)

Foreign Agricultural Service, American Embassy, Tokyo  
[www.usdajapan.org/](http://www.usdajapan.org/)

U.S. Embassy, American Citizen Services  
<http://tokyo.usembassy.gov/e/tacs-main.html>

Information on Japanese government procurement:

Japan External Trade Organization (JETRO)  
[www.jetro.go.jp/en/matching/procurement](http://www.jetro.go.jp/en/matching/procurement)

Office for Government Procurement Challenge System (CHANS)  
 Cabinet Office  
[http://www5.cao.go.jp/access/english/chans\\_about\\_e.html](http://www5.cao.go.jp/access/english/chans_about_e.html)

B to B e-commerce marketplaces:

Trade Tie-up Promotion Program by Japan External Trade Organization

<http://www3.jetro.go.jp/tppoas/index.html>

Tokyo Web Trade Service by Tokyo Metropolitan Small Business Center  
[http://www.tokyo-trade-center.or.jp/ttc/mediation/jsp/search/top/top\\_en.jsp](http://www.tokyo-trade-center.or.jp/ttc/mediation/jsp/search/top/top_en.jsp)