

Selling U.S. Products and Services

International Copyright

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1. [Using an Agent or Distributor](#)
2. [Establishing an Office](#)
3. [Franchising](#)
4. [Direct Marketing](#)
5. [Joint Ventures/Licensing](#)
6. [Selling to the Government](#)
7. [Distribution and Sales Channels](#)
8. [Selling Factors/Techniques](#)
9. [Electronic Commerce](#)
10. [Trade Promotion and Advertising](#)
11. [Pricing](#)
12. [Sales Service/Customer Support](#)
13. [Protecting Your Intellectual Property](#)
14. [Due Diligence](#)
15. [Local Professional Services](#)
16. [Web Resources](#)

Using an Agent or Distributor

Costa Rican law provides for two main forms of representation: a representative and a distributor. It is possible for one person to be both a representative and a distributor at the same time.

A. Representative or Distributor

The governing Costa Rica law in this area is the "Law for the Protection of the Local Representative of Foreign Companies" (Law No. 6209).

A representative or a distributor is any individual or company who "in continuous and autonomous form, with and without legal representation, acts by directly placing purchase of sales orders among the local import or export firms, on a commission or percentage basis; or who prepares, promotes, facilitates and completes the sale of merchandise or services which another foreign merchant or firm renders."

A representative:

--may be a Costa Rican or a foreigner, permanently and legally established within the country for at least ten years;

--must have at least three years experience engaged in any form of commerce within Costa Rica;

--must be sufficiently knowledgeable in commercial matters and recognized as being solvent and of honorable character; and

--must be duly registered as such in the Mercantile Registry of Costa Rica.

A distributor must meet the same requirements as a representative, as described above. Specifically, a distributor is defined as an individual or company that purchases goods directly from the manufacturer for the purpose of resale. Generally, a distributor signs a distribution agreement with the manufacturer and carries a stock of inventory. A distribution agreement may be exclusive or non-exclusive. It is not uncommon to find a representative or a distributor representing multiple product lines.

The Costa Rican Commercial Code permits a U.S. company the opportunity to participate in public tenders directly, without a local Costa Rican representative. The only requirement is that the official representing the U.S. Company must have a Power of Attorney that must be certified by a Costa Rican Consulate in the United States. However, the process of bidding on public tenders is usually a tedious process, and best accomplished through the employment of a qualified Costa Rican representative.

B. Finding a Partner

The Commercial Service (CS), a division of the U.S. Department of Commerce (USDOC), offers U.S. companies assistance in identifying potential business opportunities in Costa Rica. Assistance is provided via the CS website, and/or counseling sessions over the telephone, via e-mail, or videoconference, or by office appointment. For a complete list of CS services, please go to www.buyusa.gov/costarica/en

To help U.S. companies identify appropriate local representatives, the Commercial Service offers its worldwide Gold Key Service (GKS) for those who wish to meet prospective local partners in Costa Rica, or its International Partner (IPS) search for those companies who cannot immediately visit Costa Rica or prefer to arrange their own appointments from a CS-generated list of local companies. To request these services, U.S. firms should e-mail: San.JoseCR.office.box@mail.doc.gov. The services will also be offered on a regular basis for other CAFTA countries.

Whatever method a U.S. company chooses for its partner search, the company should ask for as much information as possible from the potential partner and be prepared to provide complete information about its history, resources, personnel, product line, and previous export experience.

Once a partner has been selected, the U.S. firm should obtain at least two business and/or credit reports as part of the due diligence process. One source of such information, Dun and Bradstreet, has two representative offices in San Jose: D&R International, S.A. Tel. 011-506-290-4586, email: drinternational@racsa.co.cr and Consultores de Credito Internacionales, S.A. Tel. 011-506-232-0443, email: racsos@ice.co.cr

Costa Rican firms wishing to represent U.S. companies may request exclusive representation in the local market. U.S. firms should consider this issue carefully to decide if they want to retain the right to sell to other representatives/importers in the market.

We strongly recommend U.S. companies employ the services of a qualified Costa Rican attorney for a number of issues, ranging from contract advice to protection of intellectual property. Lists of Costa Rican law firms can be obtained from the Commercial Section website (Business Service Providers) and from the Consular Section of the U.S. Embassy in Costa Rica (See Web Resources Section). Both the Costa Rican Chamber of Commerce (Cámara de Comercio) and the Costa Rican-American Chamber of Commerce (AmCham) have established International Arbitration Centers for alternative dispute resolution. Please refer to Chapter 9 for contact information for these chambers.

C. Agricultural Sector

The United States is the single most important agricultural partner of Costa Rica due to its geographical proximity and the high quality and wide selection of competitively priced products. However, competition in the local market is increasing. Costa Rica negotiated a free trade agreement with Chile, which became effective in February 2002. Under the agreement, Chilean fruits (fresh and canned), candies, and other food products received preferential tariff treatment, resulting in stronger competition for U.S. products. Costa Rica also has free trade agreements with Canada, which took effect in November 2002, and Mexico which took effect in January 1, 1995. These agreements provide duty-free access to agricultural products competing with U.S. products.

Most grains are imported in bulk, limiting the import market to a few major players. There are two wheat mills (Molinos de Costa Rica and Fábrica de Harinas de Centroamerica), which account for all wheat imports. Two groups of private sector importers make almost all yellow corn and soybean import purchases. Rice is generally imported by a group of producers and millers associated under the name Corporacion Arrocería (Rice Corporation). Rice importers outside of this group have to pay higher duties. The law that created the Rice Corporation allows only the Rice Corporation to import duty free, when there is a rice shortage.

Import permits (other than phytosanitary and sanitary) are not required for imports of grains, poultry, meat, dairy products or any other agricultural product, per the terms of Costa Rica's GATT accession agreement.

Costa Rica established tariff-rate quotas (TRQs) for high-tariff products in conformance with its Uruguay Round commitments in July 1997. The TRQs for chicken parts were partially filled in 2002, 2003, and 2004. Although there was interest on the part of importers in using the chicken TRQs in 2001 and 2002, Costa Rica banned poultry imports from the U.S. in January 2001. After substantial government-to-government negotiations and inspections of U.S. and Costa Rican processing plants, the ban was lifted in 2002. Outside of the TRQs, Costa Rica also reduced tariffs on these sensitive products from 266 percent to 150 percent for chicken, and from 106 percent to 65 percent for dairy products. The Costa Rican Government requires plant inspection and approval of any export establishment that wishes to export to Costa Rica.

A list of the major Costa Rican importers of consumer-oriented foods can be obtained by contacting the Foreign Agricultural Service (FAS) office at the U.S. Embassy, San Jose. For more information, please contact Illeana Ramirez at Illeana.Ramirez@usda.gov

D. Negotiating an Agreement with a Costa Rican Company

Once a U.S. company has selected a prospective representative, the next step is to negotiate an agreement. The content of this agreement is extremely important, as it will determine the legal basis for any relationship between the exporter and the representative. Engaging a qualified lawyer is strongly advised.

U.S. companies should pay close attention to the conditions of contract termination with representatives and distributors and be prepared to work within the prescribed guidelines. In brief, accordingly to the Costa Rican Commercial Code, when a U.S. company breaks an agreement with an agent/distributor, it must compensate the agent or distributor for loss of income according to a formula based on the history of sales made or commissions earned by the Costa Rican company (equivalent to four months' income for every year of the contract, up to nine years). The compensation formula is affected by the terms of any written agreement between the parties; thus, it is important to have a written agreement in place and to have that agreement reviewed, prior to signature, by a competent, qualified attorney familiar with Costa Rican law. Under CAFTA-DR, the provisions regarding payment of damages under the Dealers Act will be repealed.

Establishing an Office

The most important provisions affecting business law are contained in the Costa Rican Mercantile and Civil Codes.

The first step in establishing a business in Costa Rica is to obtain the assistance of a Public Notary, the only professional authorized by law to register a company (in Costa Rica, almost all lawyers can act as a Public Notary). Companies must be filed in the Costa Rican Mercantile Registry in order to be a legal, authorized entity. At registration, all information related to the new company and the persons who will manage the company must be submitted. This information includes full name, nationality, occupation, marital status, domicile, the legal form of the business being organized, purpose of the company, amount of initial capital and the manner in

which this capital is to be paid, time limits for payments, domicile of the company, and any other agreements made by the founders.

An extract of the registration is then published in "La Gamete", the official legal journal. Payment on initial equity (usually nominal) must be expressed in local currency and deposited with a local bank of the Costa Rican national banking system until registration is completed. Initial equity payment is generally from US\$100 to US\$1,000.

Depending on the type of business, the company may have to acquire a municipal license or permit. A foreign company that has or intends to open branches in Costa Rica must appoint and retain a legal representative with full Power of Attorney concerning the business or the branch.

Similar to U.S. law, foreigners must become residents in order to work in Costa Rica.

Individuals interested in establishing a business in Costa Rica are encouraged to contact CINDE (Costa Rican Coalition for Development Initiatives) and/or PROCOMER (Costa Rican Foreign Trade Corporation). Both organizations are involved in providing support and information for prospective investors to Costa Rica. Each organization maintains extensive information databases that are useful to potential investors in evaluating operating costs; taxation issues; availability of employees; and related investment questions. Please see the end of the chapter for links to these organizations, and Chapter XI for full contact information for representatives of these organizations in Costa Rica and in the U.S.

Franchising

The current growth of franchising is slowing due to market saturation, mostly in the fast food sector. Franchising has been spurred by the rise of tourism to Costa Rica. The first franchise to enter the market was McDonald's in 1970, and others such as Pizza Hut quickly followed. Payless Shoe Source, Marriott Courtyard Hotel, Comfort Inn, TGI Friday's, KFC, Tony Romas, Burger King, Haagen-Dazs, Outback Steakhouse and Office Depot are the latest arrivals to the Central Valley, where a majority of Costa Rica's residents live. On the other hand, other franchises, such as Rooms to Go and Blockbuster Video, were unsuccessful in Costa Rica either because of the economic conditions at the time or poor copyright protection.

Approximately half of the thirty franchise retail businesses operating in Costa Rica are fast food/specialty food enterprises. Franchises in Costa Rica employ approximately 4,000 Costa Ricans. About twenty percent of these franchises are locally owned, and the remaining eighty percent are foreign-owned, (and of this amount, ninety percent are U.S. franchises).

Price is a major competitive factor in this sector, as is express delivery for food products. Costa Ricans are very price conscious and savvy shoppers. They are generally aware of what items cost in the U.S. and how the same or similar items are priced in Costa Rica. While they are willing to pay slightly more for the perceived quality of an American product, they are still limited by their home budgets.

A key factor for success in franchising in Costa Rica is the careful selection of the potential franchisee and location of the outlet. The right franchisee will have the financial resources to enter and develop the market, as well as excellent local

business contacts and an understanding of the idiosyncrasy of the local market. In Costa Rica, business contacts greatly affect the success of a project. This can come into play, for example, in developing local sources of supply, expediting government approval and licensing, and in gaining access to prime locations for establishing a franchise site. Another reason for being highly selective in the choice of a franchisee is Costa Rican Law 6209 that protects distributors and agents. The local courts view this law as protecting franchisee rights as well. Law 6209 tends to favor the local franchisee and can make it very expensive for a foreign franchiser to end a relationship with a local franchisee for reasons other than nonpayment of royalties.

Opportunities exist for growth and expansion of franchising in Costa Rica outside of the fast food sector. Entrepreneurs continue to appreciate the mature business systems and proven track record that many franchises offer. Effective franchise marketing normally entails sensitivity to the need to adapt to the local culture, such as adding local foods to the menu or translating manuals/catalogs into Spanish.

Owing to Costa Rica's small size, an exclusive territorial contract is often preferred. Some successful franchise operations involve investor groups who have purchased master franchise rights for the entire Central American region. PriceSmart and Payless Shoes are prime examples of this strategy. In many cases, a local franchisee will own several different types of franchises in different industry sectors as a way to diversify their investments.

A new group of franchisee investors is emerging that includes young professionals who are familiar with U.S. business practices and who are seeking to break away from their family businesses and start their own companies. They view franchising as an easy market entry strategy. They view quality franchiser support as critical to their success and to make up for their lack of industry knowledge.

The Commercial Service in Costa Rica fielded a delegation to attend the April 2003 Franchise Exhibition in Washington D.C. However, typically, a potential franchisee does not attend franchise shows. Instead, the Internet is the number one source of information for local franchisees seeking potential new franchises. Potential franchisees will usually analyze the local market themselves and determine the franchise concepts that are most attractive for the local market by using their personal knowledge of popular and successful franchises in the U.S. market. They will then typically contact ten or so different franchise companies in that market segment for comparison purposes.

The second most popular way potential franchisees make contact with franchisers is when a particular franchiser comes to Costa Rica looking for investors/franchisees and contacts them directly. Though it is often difficult to identify business people who have an interest in franchising, along with the necessary business experience and resources to develop and manage new franchise concepts, the Commercial Section of the U.S. Embassy can assist with introductions and information on strategies used to reach potential franchisees. Advertisements in major local media are also an effective means to reach a wide range of potential franchisees.

Franchise royalties are subject to a 25 percent withholding tax. However, the U.S. provides a foreign tax credit for this expense. Import taxes vary depending on the item; the trend is toward lower import taxes. The following are approximate:

Value Added (sales) Tax	13 percent
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Ad valorem (import duty) Tax	50 percent
Special import tax	1 percent

Direct Marketing

Direct marketing has enjoyed limited success in Costa Rica. Since the country does not have a postal/ mailing system with defined street names and numbers, it is difficult to obtain client lists or reliable addresses. There is no law that regulates direct marketing. In the absence of a specific law, the general law that applies to advertising and public relations agencies also regulates the direct marketing method of selling.

Joint Ventures/Licensing

Licensing is not widespread in Costa Rica. Traditionally, foreign companies have exported to Costa Rica or set up manufacturing/assembly operations in the country, either independently or through joint venture arrangements. Foreigners may legally own Costa Rican companies, or equity therein, and may invest in all areas not expressly reserved for state or parastatal entities. Foreign corporations may be organized legally in several ways: as branches (except for banks), joint ventures, wholly-owned subsidiaries, or locally incorporated companies. Bona fide investments are encouraged and promoted actively by the Costa Rican Government.

Selling to the Government

The Costa Rican Financial Administration Law governs the Costa Rican Government procurement system.

Government entities generally acquire their goods and services through public tenders, which are published in the official newspaper, La Gaceta, and major newspapers. Some purchases are made directly from suppliers that have pre-qualified and pre-registered with government entities.

Foreign companies may establish a representative through a Power of Attorney for a specific tender. This representative can be a Costa Rican citizen/company, a foreign resident, or resident of the country. A general Power of Attorney can also be given to an individual or company to represent the foreign company in various tenders for a specified period of time.

The local representative should be able to translate tender documents from Spanish into English and assist in preparing bid offers in Spanish. Some large projects may require the presence of U.S. company officials in Costa Rica in order to better evaluate the requirements and prepare a competitive offer to the Costa Rican government entity.

Foreign companies may bid directly on Government tenders in Costa Rica. However, when competing for government contracts, there is a considerable advantage to have a strong local partner or representative. The local representative should be established, reputable, well known and respected in business circles, and knowledgeable about Costa Rican business culture and process. This is especially true when competing for and executing government tenders. As noted earlier, the Gold Key Service of the U.S. Department of Commerce, available directly through the Commercial Section in San Jose or through the U.S.-based partner network of U.S. Export Assistance Centers, is an excellent, economical strategy for identifying a potential partner or representative in Costa Rica.

In June 1995, the Government of Costa Rica enacted Law No. 7494, which established new procedures for public procurement. The regulations associated with this law were approved and published in the official newspaper "La Gaceta" in October 1995. This new law and its regulations came into effect in May 1996. Various articles of the Law are periodically revised and published in La Gaceta.

The law establishes that government entities or ministries with a regular annual budget of more than US\$200 million are allowed to issue public tenders for purchases above US\$388,000. The entity may make purchases of between US\$ 172,500 and US\$388,000 through tenders circulated among a registered suppliers list. Below US\$172,500 the entity is allowed to make purchases among pre-selected bidders. Under CAFTA-DR, these amounts would be changed for the procurement of goods and services and construction services.

Five important government entities follow the above-mentioned guidelines: the telecommunications/electricity monopoly, the Costa Rican Institute of Electricity (ICE); the Costa Rican Petroleum Refinery (RECOPE); the Costa Rican Institute of Social Security (CCSS); the National Insurance Institute (INS); and the Government's National Procurement Department (Proveduria Nacional). These five entities constitute the most important Costa Rican government buyers/contractors to foreign companies and have traditionally been the largest generators of public tenders in Costa Rica.

Through its tender schedule, the Government is attempting to avoid unnecessary delays in the bidding process and the payment of interest charges on undisbursed loans provided by international lenders. The system exempts tenders of US\$ 2.3 million and less made to registered suppliers from the possibility of appealing to the Comptroller's Office. The procuring entity itself must handle any complaint from the bidders.

The Commercial Service of the U.S. Embassy in San Jose encourages U.S. manufacturers and exporters of products and services required by the entities mentioned above to register their firms with the relevant Costa Rican government institutions by contacting their procurement departments. More importantly, we recommend that U.S. companies interested in exporting to Costa Rica contract with a local representative who can proceed with the registration process at the government entities requiring such registration. Registration will allow the procurement departments of government institutions to invite registered foreign firms to bid on tenders and to be considered for direct purchases.

Distribution and Sales Channels

Costa Rica is affectionately referred to as "Latin America Lite" because of the abundance of U.S. products and services that gives the country the feeling of being in America. The retail distribution sector closely follows U.S. practices. Seventy-five percent (2.5 million people) of the country's consumers live in the Greater San Jose area known as the Central Valley. They are accustomed to large shopping centers and malls that house retail stores, kiosks, food courts, theaters, and supermarkets.

Franchise outlets, smaller mixed-use commercial centers and hypermarket-type operations are proliferating rapidly due to increased pressure and competition from big retail stores such as Price Smart and Hypermas. In recent years, retail outlets have undergone a mayor consolidation. There are currently five large department store chains, six supermarket chains, and countless small and medium-sized family-owned firms that compete with the larger retailers. Rural areas are served by the "general store", locally known as a "pulperia".

The concept of customer service is very important in Costa Rica. TV, radio, print and billboard advertising and discounting are widely accepted practices.

Distribution channels do not vary significantly for food/agricultural products. Some products (for example, fresh fruits and frozen foods) require technical knowledge regarding handling due to their shelf-life requirements and need for refrigeration. Such facilities are available in Costa Rica as the country exports to other Central American and Caribbean countries. Private firms import consumer foods, while several wholesalers are dedicated to the food import business. The food product distribution chain to supermarkets and to medium and small stores is well developed. Some of the larger supermarket chains import directly.

Although it is possible to export directly to Costa Rica, U.S. firms will find it is beneficial to find a local representative and/or establish a local sales office. A local representative is a requirement for those companies wishing to sell to the public and private sector. Costa Rica is a small market equal the size of West Virginia; therefore, identifying one representative for the entire country is often sufficient to cover the country.

Selling Factors/Techniques

As in the U.S., purchases by Costa Ricans generally are based on price, quality, technical specifications, convenience, and the availability of local product support or after-sales service. The Costa Rican Government does not play a role in determining product prices. U.S. exporters to Costa Rica must be willing to make sales of smaller volumes than those to which they may be accustomed in larger markets, keeping in mind Costa Rica's GDP roughly US \$18 billion with a population of approximately four million people. To achieve large volume sales, Costa Rica should be viewed in the context of the larger region of Central America.

Sales catalogs and brochures must be translated into Spanish. Products must be competitive for both quality and price. Payment terms for purchases above US \$ 4,000 are generally carried out through irrevocable letters of credit. Open account payment terms are reserved generally for well-known and well-established customers. Insurance of accounts receivable is available through the Export- Import Bank of the U.S. Cash payment for small purchases is a typical practice.

Business in Costa Rica, as in other Latin American countries, depends heavily on the establishment of personal relationships. The Costa Rican business community places great importance on personal contacts with foreign suppliers. New U.S. suppliers/exporters should be prepared to travel to Costa Rica periodically and follow up with their customers and representatives regularly through contacts by fax, telephone, and/or e-mail. A patient sales approach is preferred to a "hard sell".

Electronic Commerce

E-commerce is still underutilized in Costa Rica, a country that used to lead the region in terms of telecommunications network development and information technology initiatives. Nevertheless, there is great potential for Costa Rica to become a major Internet and e-commerce user. This is primarily due to the fact that the country has 93 percent telephone coverage through the Instituto Costarricense de Electricidad ICE network (the telephone and electrical parastatal monopoly); the level of educational development (96% literacy rate) is high; national governments have emphasized the importance of university education and technical skills; and political stability has long been a constant theme, in Costa Rican history.

Although e-commerce has a good potential in Costa Rica, numerous barriers hamper the country. The country lacks an approved legal framework that would enable the use of digital signatures and certificates, as well as appropriate and adequate enforcement of intellectual property protection of Internet-related works and other international laws related to Internet use, although that would improve under CAFTA. Recent studies have indicated that Internet access still lags in rural areas. Perhaps, most importantly, the local market is still dominated by ICE as the sole Internet service provider (ISP) via its RACSA subsidiary's, cable modem service, and newly piloted DSL service. This is in marked contrast to the relatively open ISP market in the rest of the region. Under CAFTA internet service would be opened up to competition in 2007.

The private sector is very interested in furthering the development of e-commerce and Costa Rica's potential to be a hub for e-business activities in the region. Only a few local companies have the capability to offer services via the Internet in addition to the usual sales channels. Costa Rican public and private banks offer their clients a variety of services through Internet. There are a number of gateways specialized in marketing products and services via the Web that have emerged as well as consumer trading sites. Major news media publish their papers on-line including their classified ads sections to facilitate the flow of information. Lastly, there is a rapidly growing base of Web infrastructure development companies consisting of local as well as Fortune 500 companies.

Trade Promotion and Advertising

Advertising:

Costa Rican newspapers are among the best ways to promote sales of products or services. Depending on the target market, advertising is also effective in magazines produced by organizations like the Costa Rican-American Chamber of Commerce (AmCham), the Chamber of Commerce of Costa Rica, and other specialized chambers/business associations. Please refer to the following links:

Television:

Channel 7 (Teletica Canal 7)	http://www.teletica.com
Channel 6 (Repretel)	http://www.repretel.com
<u>Radio:</u> Radio Eco News	http://www.radioeco.com
Radio Monumental	http://www.monumental.co.cr

Print Media:

Capitales.com	http://www.capitales.com
Periodico La Nacion	http://www.nacion.com
Periodico El Financiero	http://costarica.capitalfinanciero.com/edactual
Periodico La Republica	http://www.larepublica.com
Periodico Al Dia	http://www.aldia.co.cr
Prensa Libre	http://www.prensalibre.co.cr
Diario Extra	http://www.diarioextra.com

Economic Publications:

Summa Magazine	http://www.revistasumma.com/equipo_editorial.html
Actualidad Economica Magazine	http://www.actualidad.co.cr/311
AMCHAM Magazine	http://www.amcham.co.cr/publications/business_magazine.html

Promotional Advertising Agencies:

<http://www.1costaricalink.com/eng/shopping/shop-eng/adverag-16eng.html>

Other Organizations:

Costa Rican-American Chamber of Commerce	http://www.amcham.co.cr
Promotora del Comercio Exterior	http://www.procomer.com/
Cinde	http://www.cinde.or.cr/
Chamber of Commerce	http://www.camara-comercio.com/
U.S. Commercial Service	http://www.buyusa.gov/costarica/en

U.S. Consular Section

<http://sanjose.usembassy.gov/conseng>.

Trade Promotion

In addition to the U.S. Department of Commerce export promotion programs, the Commercial Service in San Jose can assist U.S. firms through trade missions, participation in local trade shows, matchmaker events, seminars, conferences, catalog shows, and business receptions. These programs are conducted periodically on a cost-recovery basis with pre-approved budgets.

There are a limited number of privately organized trade promotion events in Costa Rica, and are mainly organized by the following companies:

Fercori

<http://fercori.co.cr>

Compuexpo

mundoexpo@racsa.co.cr

Visit USA

<http://www.visitusa-cr.com>

Pennwell/Coscom

<http://pennwell.com>

Expo-Construccion 2005

<http://construccion.co.cr>

Pricing

The prices of products imported into Costa Rica are typically based on:

- the CIF value plus import taxes,
- Customs agent fees,
- in-country transportation costs, and
- other product-related costs.

The Costa Rican Government has, however, established a "Canasta Basica" (market basket of consumer products) considered essential for the traditional household – foods; household consumables; school uniforms, shoes and supplies; basic construction products; agricultural chemicals; and tools and medicines -- the prices of which are monitored to assess if price increases are reasonable.

U.S. export pricing generally excludes the U.S. domestic marketing cost component, allowing a base price that is more competitive and providing more latitude for negotiating margins that motivate Costa Rican distributors, while maintaining attractive pricing in the market. Virtually all companies price their goods in dollars.

Sales Service/Customer Support

Product support and after-sales service, usually provided through a local representative with the support of the U.S. exporter, is extremely important for both Costa Rican government institutions and private purchasers.

Availability of maintenance contracts, identification of convenient repair facilities, as well as any required technical support, are expected by buyers. Service literature and contracts should be provided in Spanish. The proximity of the U.S. to Costa Rica provides U.S. exporters with added flexibility in determining the most cost-effective and efficient product support arrangements.

Protecting Your Intellectual Property

Costa Rica is a party to the Paris Convention for the Protection of Intellectual Property; Patent Cooperation Party; Washington Treaty of Intellectual Property in respect to Integrated Circuits; WIPO Copyright Treaty (WCT); Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; and the WIPO Convention.

Inadequate enforcement of Costa Rica's intellectual property laws (IP) remains a U.S. concern. However, in recognition of improvements by the Costa Rican Government to IPR laws and enforcement, in April 2002 the United States moved Costa Rica from the Special 301 Priority List to the Watch List, where it remains. While many elements of Costa Rican intellectual property laws appear to be consistent with TRIPS obligations, the country's criminal codes have certain weaknesses that limit effective deterrence of intellectual property crimes. The most significant step the Costa Rican Government has taken to improve intellectual property protection is increased raids on companies. Other attempted initiatives, including the formation of an inter-governmental intellectual property rights commission and the training of judges and prosecutors on intellectual property laws have not produced significant improvements in the prosecution of IPR crimes.

Costa Rica is currently considering meaningful changes to its existing IP laws. The United States hopes that changes will include increasing criminal penalties and removing the "insignificance" provisions of the criminal code relating to IP violations. Several proposals to strengthen IPR laws have languished in the Legislative Assembly during 2004, and IPR reforms are not likely to pass before CAFTA-DR is considered by the Assembly.

CAFTA-DR provisions will strengthen Costa Rica's IPS protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. CAFTA-DR will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

U.S. companies are advised to contact qualified local attorneys to register their company trademarks and other intellectual property as they enter or consider entering the local market. Both CS and the Consular Section have lists of these lawyers on their sites or are available upon request.

Due Diligence

Before finalizing any contract, whether for a sale or representation, U.S. companies are urged to obtain information on the bona fides of the foreign firm, including reliable business and financial references. While the Commercial Service Costa Rica does not offer such services, it can link interested companies to well-known private sector credit-reporting services that can provide credit reports for local companies in Costa Rica (see "Finding a Partner" under Section "Using an Agent or Distributor" of this chapter).

Local Professional Services

Obtaining competent local legal representation is critical when one is planning to start a business, buy or sell real estate, apply for resident status, or make any type of significant investment in Costa Rica.

Not only is Costa Rica's legal system (based on Roman law) considerably different than that of the United States (with its roots in English common law), but language differences present opportunities for serious miscommunications and misunderstandings, sometimes with serious consequences. It is strongly advised to retain the services of an attorney who is completely bilingual to avoid potential communication failures. In Costa Rica, many local attorneys have been trained in the U.S. and are experienced in U.S. and local law.

Frequent visits and communication and effective oversight of local legal representatives are also important to ensure that steps are completed in a timely manner.

Web Resources

U.S. Commercial Service

<http://www.buyusa.gov/costarica/en>

U.S. Consular Section

<http://sanjose.usembassy.gov/conseng>

U.S. Foreign Agriculture Service

<http://www.fas.usda.gov/>

Costa Rican-American Chamber of Commerce

<http://www.amcham.co.cr>

Promotora del Comercio Exterior

<http://www.procomer.com/>

Cinde

<http://www.cinde.or.cr/>

Chamber of Commerce

<http://www.camara-comercio.com/>