



Frequently Asked Questions

On the

TRADING PARTNER AGREEMENT

Authorized for ST external use

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1. FAQ on the TPA

1.1. Introduction

New Standards and Internet-based technologies are expanding the capability of the global network of e-Business transactions. To meet this demand, agreements need to be adapted to fit the new requirements of e-Business and legal aspects of e-Customer Relationship Management.

The development of a standard Trading Partner Agreement (TPA) is vital to all supply chains, and in general for doing secure e-Business. A general legal agreement that governs **electronic information exchange** for supply chain partners did not exist before the TPA Program. Legal readiness concerning XML-based e-Business transactions had previously been limited to terms and conditions typically found within EDI-based agreements. Every company should understand and operate within the regulatory frameworks and legal structures of the countries in which they do e-Business. This standard TPA will help avoid lengthy negotiations when engaging with new trading partners.

1.2. What is the TPA?

The Trading Partner Agreement (TPA) is a contract governing the electronic information exchanges between each pair of trading partners. It is a multipurpose Agreement covering general e-Business services, and contains appendices to specify the technical details required by the parties to the Agreement for secure operation of electronic information exchanges.

1.3. What is the TPA Program?

The TPA Program has been defined through an international collaboration between representatives of high-tech companies, industry associations and international standardization bodies with interest in a standard TPA covering relevant legal aspects of electronic information exchange. Therefore, the TPA is the result of a global effort for the creation of a worldwide standard TPA that aims at becoming the current tool recommended to govern electronic information exchange.



The TPA Success Story...

Joint WW Press Release by:



BRUSSELS, Belgium and SANTA ANA, Calif., Oct. 22, 2001 –

“A collaborative effort has resulted in the first release of a standard, industry-wide Trading Partner Agreement that addresses the legal requirements of electronic information exchanges.....

14 TPA Initiative – Dr. Luca Palermo – November 29, 2001



1.4. What work methodology has been applied for the TPA Program?

The TPA Program, a project started in May 2001 and closed at the end of December 2001, was carried out as a Foundational Program of RosettaNet. Contributors to this effort were EDIFICE, the European Semiconductor Industry Association (ESIA), and the Legal Working Group (LWG) of the UN/CEFACT, with each involved in the review of the initial draft TPA. Involving the LWG is very important in the hope that the legal model of the TPA can be consistent with the existing international legal framework.

The resulting TPA was produced in close cooperation with STMicroelectronics, NEC Electronics, Motorola and Nokia. The work started under the premise that the TPA model remain consistent and compliant with previous work established by members such as RosettaNet (RosettaNet agreements), EDIFICE (EDI agreements), and the LWG of UN/CEFACT (Recommendation 26, see question 1.12). It was the group's intent to develop a proposal that unified the work that had already been widely published, and in doing so, the group hoped that the overall review of the TPA could be expedited and kept consistent with the canon of existing work.

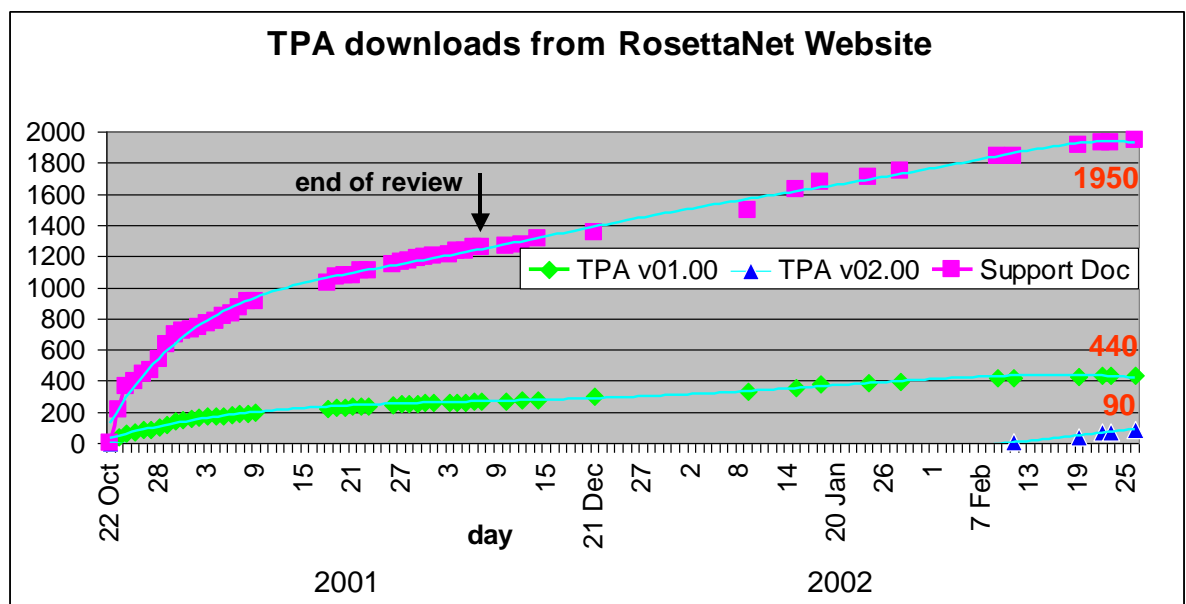
The TPA working group conducted a gap analysis by gathering and comparing existing agreements from 15 companies and organizations to



provide the foundation for the initial TPA draft. To keep the TPA provisions consistent with the existing international legal framework, European Commission and UN guidelines were used as part of the proposal.

For the TPA review, RosettaNet and EDIFICE published the TPA draft and encouraged industry review by consortium Partners. During a 7-week long review period that closed on December 7th 2001, almost 1500 downloads of the TPA documentation were registered (see picture below). This demonstrated that many companies were very interested, whether they contributed to the TPA or not.

Valuable feedback was received from EDIFICE, ESIA, UN/CEFACT LWG, STMicroelectronics, NEC Electronics, Motorola, Nokia, Intel, Hewlett-Packard, and the Uniform Code Council (UCC). These contributions from global companies, being operative in all regions over the world (US, Japan, Europe, etc.), demonstrate that the TPA takes international law into account and can be considered as a global reference.



1.5. What is the link between the TPA Program and ebXML?

The need of creating a standard contractual framework to operate with electronic information exchange is common to both the TPA Program and ebXML¹ standard. ebXML is focusing on the development of solutions for the electronic exchange of processable data through to the back office. So far, such solutions do not include the legal part of the agreement (which is mandatory for a contract) between two parties. Therefore, ebXML sought the

¹ For more information, see at <http://www.ebxml.org>.



necessary legal expertise from UN/CEFACT LWG. On its side, the LWG will evaluate the possibility of using the TPA in order to fill the potential legal gap (see question 1.12).

EDIFICE, ESIA, RosettaNet and UN/CEFACT LWG consider that the legal framework for ebXML, and in particular the TPA designed to support it, does not yet exist and may be the next logical step.

1.6. What is the value proposition of this TPA?

The proposed TPA helps to address legal issues often faced by trading partners within the supply chain. A standardized language can help to minimize partner conflicts during contract negotiations, ensures a reciprocal perspective with regard to legal issues, creates legal and contractual certainty and fosters trust between partners. In addition, a standard TPA will likely accelerate contractual procedures during the deployment of e-Business services, and will ultimately improve collaboration and trust between trading partners.

1.7. What e-Business services does the TPA cover?

Industry trends, not limited to those of high-tech companies, currently show that advanced technologies are used more and more for doing e-Business with trading partners.

Examples of this trend are the use of Electronic Data Interchange (EDI) messages, Portal technology, XML transactions (for example RosettaNet exchanges) and Web Services. The approach of the TPA team has been to put the customer needs in the focus and to create a TPA that covers business scenarios using different technologies at the same time. This we refer to as a multipurpose TPA: one standard TPA for general e-Business.

This is also the reason why the TPA contains modules for technical and service-related specifications. In fact, to deploy an e-Business service with a trading partner one needs to specify all relevant service details on which the parties must agree. For example, one needs to specify accurately which security methods shall be applied to ensure electronic transactions are secure and effective. Having a standard tool to do that will make the process easier and more repeatable for future deployments.

1.8. Why is the TPA structure modular?

First of all, the modular structure makes the TPA extensible. This is necessary since more e-Business services may be included as new advanced technologies are developed.



Secondly, modules allow separating the legal part of the TPA (*General Legal Provisions* and *NDA*) from the technical part containing the service-specific details.

Lastly, the modular structure allows trading partners to select those service-specific TPA modules that need to be attached to the TPA *General Legal Provisions*, depending on the service under deployment (it can be a RosettaNet process, or a Portal service, or an EDI message, or any possible combination). In any case, the TPA modules chosen as being part of the Agreement must be specified in the provision "1.15 Entire Agreement" of the TPA.

1.9. Is the TPA an open standard or is its use somehow limited?

All entities, associations or communities that may have interest in using it for general e-Business can adopt the TPA in total or in part. It is an open standard; there are no restrictions on its use; and it is not protected by copyrights. Particularly, the TPA can be of great help for small and medium-sized companies that do not have the required legal resources or maturity to ensure such legal readiness on their own.

This standard TPA is (or will be shortly) published as "freeware" in the public domain of the Web site of RosettaNet, EDIFICE, and ESIA, and can be downloaded without obligation. However, all information is provided "as-is" without any warranty or liability.

1.10. Is security likely to be improved with this TPA?

Today, it is very important to have a comprehensive TPA that makes provisions for new technologies. Just as the TPA is the result of technology advances, potential new legal issues may affect the way that companies do e-Business. With the use of **Internet** as a transport medium, **risks** may propagate through new communication channels opened by new technologies, creating new legal issues and contributing to legal uncertainty. This new TPA specifies today's need for legally protecting a Company through contractual clauses and acts as a framework describing security measures, identification methods of the trading partner, confidentiality restrictions, business rules, and actions taken in the event of legal disputes. This TPA is therefore an improvement of the security framework to do e-Business. Company Information systems should not be opened to a trading partner that has not agreed - by signing the TPA - to use Company resources securely and in line with legal conditions established in the TPA.

Moreover, each Company shall enforce the TPA in combination with internal Internet agreements: All STMicroelectronics employees accessing Internet have signed an Internet agreement that defines strict obligations for Internet usage as a way to minimize all well-known risks.



1.11. Will this TPA be accepted as a global precedent?

Global recognition and acceptance of a standard TPA by the e-Business community will significantly reduce the legal issues and delays previously encountered in implementing cross-border e-Business with trading partners. The general need of a TPA and the quality of the results obtained have brought EDIFICE to see this TPA as a very positive step in furthering all types of e-Business collaboration, stressing that the promotion of its usage by industry forums will encourage widespread adoption. Also, the LWG of the UN/CEFACT intends to evaluate the potential endorsement of this TPA model in the very near future with the goal of identifying the demand for a TPA specially modeled for ebXML.

Some people may have difficulty accepting this new TPA as a standard, just because they feel the described legal model means a rigid and complex change in policy. This is not true, and the TPA working group views the TPA as part of a set of precedents. For TPA deployment, some TPA details may require negotiation of a few TPA provisions, case-by-case, depending on the e-Business service, and the country's laws or local legislation models. But even if on average 95% of the TPA model is used "as-is", the timesavings for tailoring the remaining 5% (e.g. as due to local legislation) will be significant.

With regard to complexity, the TPA working group widely demonstrated – by means of a gap analysis executed on many existing agreements – that the developed model is one of the ways to comprehensively cover complex legal issues of e-Business.

Further, there are many small- and medium-sized enterprises (and even some larger companies) that do not have the expertise or the funds to incorporate these types of legal issues for electronic information exchange into buyer-seller contracts. There will still be companies that insist on a separate, specific TPA in addition to a buyer-seller contract. If a Customer is demanding that a TPA be put in place, it is important that a globally recognized standard be employed rather than spend the time to create a suitable TPA from scratch. There are some lawyers who will argue that a TPA is not worth the paper it is written on and that the buyer-seller contract is the only recognized legal agreement, but as new advanced technologies and communication methodologies for B2B emerge and more companies start trading in the global networked market, a series of documents like the TPA will prove to be valuable, encompassing any type of electronic business in any region and potentially reducing time-to-market.



1.12. What role is the UN/CEFACT LWG going to play with regard to the TPA model?

Following the December 2001 meeting with the UN/CEFACT LWG in Lugano (Switzerland), the joint LWG-TPA team (see picture below) decided the following roadmap with regard to the near term use of the TPA.

The joint team discussed the relationship between UN/CEFACT LWG Recommendation 26 (a Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange - dated March 1995), and a possible new deliverable on the basis of collaborative work with RosettaNet-EDIFICE-ESIA on the standardization of the TPA. Various alternatives for dealing with the TPA were mentioned, and the Chairman of LWG presented them to the TPA team. Three steps are necessary before deciding upon the LWG endorsement of the TPA:

- Carry out a comparison (gap analysis) between Recommendation 26 and the TPA and check the consistency of both models. A preliminary gap analysis has been already done by Luca Palermo and sent to LWG.
- If they are not consistent - establish whether discrepancies can be cleared.
- If they are consistent or able to be made consistent - the final model goes for consultation to international organizations and then to UN/CEFACT Plenary for review and endorsement.



The team of the joint meeting between UN/CEFACT LWG and TPA members. From left to right: Dr. Bettina Scholz (Legal Counsel NEC Electronics, Germany), Ms. Kaisa Perkkio (Senior Legal Counsel Nokia, Finland), Mr. Matteo Mariani (Ministero Commercio Estero Direzione Servizio Studi, Italy), Mr. Arve Foyen (Simonsen Foyen Advocatfirma, Norway), Mr. Mauro Castagno (Ministero Commercio Estero Direzione Servizio Studi, Italy), Mr. Mario Apostolov (Economic Affairs Officer, UNECE Trade Division secretariat), Dr. Jean-Claude Morand (e-Business Program Manager, STMicroelectronics and ESIA, Switzerland), Dr. Luca Palermo (RosettaNet TPA Program Director, STMicroelectronics, Switzerland), Mr. Derry Philippon (European RosettaNet Manager, Motorola, Switzerland), Hans Henning Eriksen (Consultant, EDI & e-business, Danish Standards Association, Denmark), Mr. Rob Van Esch (Chairman of the LWG, Rabobank Nederland, The Netherlands), and Ms. Dora Cresens (EDIFICE secretariat, Belgium) behind the camera. Participants not on the picture: Mr. David Marsh (Vice Chairman of the LWG, UN/CEFACT Legal Rapporteur, Electronic Business and Internet Law, United Kingdom), Mr. Renaud Sorieul (Senior Legal Officer, UNCITRAL), and Ms. Nicoletta Scarnera (Legal Counsel STMicroelectronics, Switzerland).

1.13. Why to handle the TPA as a legal document?

(a) The volume of electronic Transactions related to commercial, business and financial information exchanges is dramatically increasing in most industries and businesses. This implies that large amounts of money are moving through the Internet, which implies an increased impact on liability conditions.

(b) RosettaNet creates a host of legal issues that must be resolved before an automated, standard process is exchanged. The idea of electronically confirming an order forecast, for example, so far has no legal foundation. If STMicroelectronics system automatically confirms a Customer's demand forecast, there must be no legal obligation to actually deliver the goods. The failure to perform an e-Transaction shall not constitute any obligation impacting the business Transaction underlying the exchanges, which are



regulated by separate terms and conditions (purchase or buyer/seller agreements).

(c) In case that a Company system fails to perform or when one trading partner causes direct damages to the other, the TPA defines the provisions to apply in order to identify the involved roles, responsibilities and liability limitation principles that would be requested by lawyers for the Dispute Resolution.

1.14. Why may the TPA framework also include a Non-Disclosure Agreement?

A Non-Disclosure Agreement (NDA) is used to protect the confidentiality of company's information exchanged in a business relationship and to define limits and liabilities for such use. The use of advanced technology allows new communication channels to be utilized (and misused) to exchange often-confidential information electronically. Several provisions of typical NDA need to be upgraded accordingly. For instance, new exchange methods based on encryption need to be applied, which are subject to legislative regulations and limitations. Therefore, export administration provisions must be included (for an overview on this topic, see at www.rsasecurity.com/rsalabs). Moreover, the future will require the integration of a TPA exchanged fully electronically. Similarly, a machine-processable NDA could be developed for electronic exchange, thus requiring a standard NDA.

1.15. Will existing NDA or EDI Agreements with our trading partners need to be replaced?

Today, each company should have an NDA in place with its trading partners. For those agreements that are already in place and still valid, replacement is not necessarily a top priority (this also holds for existing EDI Agreements). The definition of *Confidential Information* usually described by an NDA is not limited to a specific service or communication technology for exchanging information. But, different types of NDA may exist, depending on the specific topics covered. Therefore, the NDA should be checked case-by-case by the responsible Legal Dept to ensure that information exchange in electronic form is also covered.

1.16. Is an electronic signature legally recognized?

The UNCITRAL model law on Electronic Commerce (1996) makes the following statements in the Article 7.1 "Signature":

Where the law requires a signature of a person, that requirement is met in relation to a data message if:

- a) A method is used to identify that person and to indicate that person's approval of the information contained in the data message; and



- b) That method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

Today, there are numerous efforts under way to establish the legal validity of electronic documents and the acceptability of digital signatures and other authentication procedures used in commercial transactions, although legislation is still pending in many countries. Japan and the United States stress the need to ensure the admissibility of electronic data in dispute resolution, which is also being addressed in the alternative dispute settlement systems of the ICC. The European Union emphasizes that there should be no regulation for regulation's sake, that regulations should be based on all Single Market freedoms (SELF-REGULATION, use of trusted Certificate Authorities that manage Public Key Infrastructures), and that regulations must take account of business realities and must achieve their objectives effectively and efficiently. The European Union also recently adopted a directive on contracts negotiated at a distance, which address electronic commerce transactions.

An EC Framework Directive for electronic signatures came into force in 2000. It says that **electronic signatures cannot be denied legal effects** just because they are in electronic format. The directive also allows Certificate Authorities to provide their services without prior authorization by national bodies. Member states may themselves decide how they ensure the supervision of legal compliance. However, member states are obliged to notify the EC of any approved provision of Certificate services.

When looking at the definition² of Electronic Signature in the TPA, one may see that the Electronic Signature can be a code or a symbol that identifies a computer. A typical example is the IP Address that uniquely identifies a computer from all others on the Internet.

1.17. Does a rule exist for the choice of TPA applicable law?

Two companies belonging to the same country must apply the law of that country. If the companies are subject to different country laws, then a negotiation must necessarily take place. Usually, it is considered fair to apply the law of the company that is bearing the heavier obligation: granting a service, selling or licensing a product, etc. Another solution is to select the law of a third country, neutral between the two involved.

Because UN/CEFACT is an international organization, it cannot endorse the use of the law of one jurisdiction in preference of another.

² An Electronic Signature means an electronic sound, code, symbol, or process, attached to or logically associated with a contract or other document and executed or adopted by a person with the intent to sign the document.



1.18. How will the TPA standard be managed in the future?

Since the TPA Program was carried out under the umbrella of RosettaNet, EDIFICE and ESIA, the TPA working group has proposed that one of them endorse the future management of the TPA. As of this writing, the issue is still open.

1.19. Will conditions of related Agreements be referenced in the TPA?

Where necessary, the terms and conditions of related agreements that are already in force with a trading partner can / must be included as being part of the TPA for electronic information exchange. A provision called *General Terms and Conditions* in the TPA allows specifying the link with other agreements and related annexes (e.g. the main commercial contract, a sales/purchase agreement, buyer/seller contract, etc.).

1.20. How do I precede deploying and executing the TPA with regard to inter-regional use?

To avoid any conflict and redundancy, each company's regional/local legal entity should drive the activity to implement, deploy and sign the TPA with trading partners. Clearly, this is only possible if awareness and education of these regional/local legal entities is ensured. To achieve this, everyone's cooperation is requested.

The TPA has been created for inter-regional use, but some provision may need to be adjusted to fit existing legal models, i.e. the applicable law and the export regulations on cryptography products. Company's Legal entities acting on a regional/local basis will be responsible for adapting and validating the TPA provisions, as well as the conditions negotiated with the trading partner.

1.21. What is the default value for the period of recording and storage of information exchanged with trading partners?

Please check case-by-case with the Legal Dept (on regional basis), as to the time limits and specifications prescribed by law that may apply in either of the respective countries of the Parties to the Agreement. It could be 10 years...!

1.22. Should Logos be avoided on the TPA?

Logos on the TPA can be distracting. Remove them if possible.

1.23. What is RosettaNet?

RosettaNet (<https://members.gs1us.org/RosettaNet>)



By establishing a global language for e-Business, RosettaNet is opening the lines of communication so that companies realize the full potential of the digital economy - including dynamic and collaborative trading partner networks - operational efficiency, and new business opportunities. RosettaNet aims to align the electronic business interfaces between dynamic supply chain partners on a global scale by means of a common language. For this goal, standards-based processes that provide industry-wide business and data models are used, enabling developers to implement standard *system-to-system* interfaces making use of XML technology.

1.24. What is EDIFICE?

EDIFICE (www.edifice.org) is the Global Network for B2B Integration in High Tech Industries. It is a non-profit organization, organized in the form of an association under the Swiss Civil Code. Its mission statement is to provide a forum which fosters professional competence and building of partnerships and which is recognized, internally and externally, in facilitating Standardized Electronic Commerce (SEC) in the industry. SEC defines as the business practices, standards and information technologies, which enable business to be done within and between enterprises by electronic means.

1.25. What is the ESIA?

The European Semiconductor Industry Association's (ESIA; for more information see www.eeca.org/esia.htm) e-Commerce experts group is chaired by STMicroelectronics' Jean-Claude Morand and is an instrument to: (a) Monitor European Directives in the subject, and draw implication for the semiconductor industry; (b) Cooperate with the EICTA (European Information and Communications Technology Industry Association) on trade issues for e-Commerce; (c) Exchange of best practices between ESIA members.



1.26. What is the UN/CEFACT Legal Working Group?

UN/CEFACT (<http://www.unece.org/cefact>) is the United Nations Center for Trade Facilitation and Electronic Business. It is open to participation from Member States, intergovernmental organizations, and industry associations recognized by the Economic and Social Council of the United Nations. The Center's objective is to be "inclusive" and it actively encourages organizations to contribute and help develop its recommendations and standards.

The private-sector UN/CEFACT's work in UN/CEFACT is a unique feature of the new cooperative private business and Within the United located in the



participation of many associations in at the policy level, and of sector technical experts working groups, is a Center, which is forging relationships between public organizations.

Within the United Nations, UN/CEFACT is Economic Commission for Europe (UN/ECE), which is part of the United Nations network of regional commissions. These regional commissions report to the highest United Nations body in the area of economics, trade and development: ECOSOC. This is the ideal location for developing practical recommendations for action because, within various work areas in the United Nations system, the regional commissions have the closest links to national Governments at the expert level.

The Legal Working Group (LWG) of UN/CEFACT develops practical tools for businesses and organizations in the area electronic commerce. The main field of interest of the Group is contractual solutions and voluntary instruments. The LWG has prepared two contractual solutions for companies and organizations that wish to conduct business electronically, namely recommendations on commercial use of interchange agreements. Other work items of the LWG include self-regulatory instruments for e-Commerce, model terms for Certification Authorities and criteria for cross-border recognition of electronic signatures.

The mission of the LWG is to analyse current legal processes and issues within the mission and objectives of CEFACT, to identify legal constraints that adversely impact the mission and objectives, and to propose practical improvements to these legal processes and issues. The main directions of the Group's work program in a particular year are then set at the annual UN/CEFACT Plenary meeting and its details are subsequently specified at every meeting of the Group so as to reflect the actual needs of users of the LWG's work.

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