
Research Report

Negotiating Umbrella Agreements

Stefanos Mouzas

Experienced negotiators know that it is often impossible to define all terms of a complex agreement. By negotiating umbrella agreements, the negotiating parties try to balance the need for certainty and calculability of give-and-take processes with the need to remain sufficiently flexible to embrace new or emerging business opportunities. Umbrella agreements describe a joint consent that explicitly articulates a framework of rules and principles that guides future agreements. It is argued that negotiators are better able to maximize their joint gains if they differentiate between agreements and the framework in which agreements are made.

Key words: negotiation, agreement, contracts, framework, consent, manufacturer–retail networks.

The Problems that Negotiators Face

This article examines the challenges of negotiating umbrella agreements. The term “umbrella agreement” describes a joint consent that explicitly articulates a framework of rules and principles that guide *future* agreements. An umbrella agreement can also be described as a “framework

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agreement,” “umbrella contract,” or a “framework contract” (Collins 1999; Crone 1993; Krüger 2003). The term “framework” is usually used more commonly in international and legal relationships, as well as in diplomacy, while the term “umbrella” is more widely used in business relationships.

Experienced negotiators know that the art of negotiation is a highly dynamic process of interaction, by which interdependent parties with different backgrounds, potentials, interests, and aims seek to improve future conciliation through jointly agreed action. Negotiators know that it is often impossible to define all terms of a complex agreement. Moreover, significant barriers often make it nearly impossible for negotiators to express important terms of their arrangements in complete and explicitly stated agreements (Hart and Moore 1988; Schwartz 1992). Such barriers to the creation of final and complete agreements usually include information asymmetries and significant transaction costs that can include (1) unforeseen contingencies, (2) drafting costs, (3) enforcement costs, and (4) renegotiation requirements (Tirole 1986).

If a final and complete agreement is delayed while parties wait for such contingencies as third-party approval to occur, negotiators may consider drafting a contingent agreement (Bazerman and Gillespie 1999). However, contingent agreements require dealing with inherent uncertainty (Duncan 1972; Downey, Hellriegel, and Slogum 1975). Uncertainty is not the same as risk: while risks can be calculated, uncertainty is an amorphous topology for which negotiators cannot assign any probabilities. Even in situations that seem certain, negotiators’ interests or relationships can dramatically change.

Negotiators try to balance the need for certainty and calculability of give-and-take processes with the need to remain sufficiently flexible to embrace new or emerging business opportunities. Consider the implications of a long-term binding contract between a manufacturer of consumer products and a grocery retailer that was designed to secure substantial business growth or to achieve significant cost advantages. If technology changes rapidly or market conditions shift, a final and binding agreement could limit the parties’ abilities to innovate or change their policies (Argyres and Liebeskind 1999). Companies may receive new offers, or they may need to rethink the exclusivity of their supply or subcontracting policies. Hence, the companies’ underlying rationale may change and the two parties may need to renegotiate their previous agreement.

Renegotiation may also be necessary because of the evolving complexity of multilateral exchanges between the two companies. For example, new assignments or new requests, modifications in the offering, adjustments of volumes and prices, as well as necessary updates in terms of payment may require a substantial renegotiation. In fact, the wish to remain

flexible might explain why business negotiators often make agreements without the use of enforceable contracts (Macaulay 1963, 2003; Scott 2003).

This inability of negotiators to reduce important terms of a business arrangement to a final and complete agreement has been examined extensively in economic theory under the heading of “incomplete contracts” (Segal 1999; Tirole 1986) and in legal theory as “relational contracts” (Eisenberg 2002; Goetz and Scott 1981; Macneil 1985, 1987, 2001), “open terms” (Gergen 1992), and “indefinite agreements” (Scott 2003). For an analysis of such incomplete agreements and an overview of the corresponding judicial strategies, see Alan Schwartz (1992), and for the limits of contract law, refer to Alan Schwartz and Robert Scott (2003).

By seeking to balance certainty and calculability of exchanges with the need to remain flexible, negotiators are confronted with three discrete problems. First, negotiators realize that they are embedded in evolving business relationships. They recognize that each negotiation does not take place in isolation. Each negotiation is often part of a complex and continuing relationship between the parties and each affects and is affected by the other relationships and negotiations (Greenhalgh 1987; Mouzas and Ford 2003; Sondak and Moore 1993). Recurrent practices in these relationships such as, for example, annual trade negotiations or regular business reviews, indicate that the time within negotiations shall not be understood as a linear process but as recursive practice. Furthermore, certain negotiation practices, such as coercion or contract formalities, have a significant effect on the relationship between parties (Atkin and Rinehart 2006). As a result, the negotiation problem is not analogous to a single decision-making problem. Instead, negotiation takes the form of an ongoing interaction in which one’s ability to learn what works best is dependent upon one’s ability to monitor what is being done (Sabel 1994).

Second, negotiators must resolve the problem of simultaneously creating and claiming value although they do not know with certainty the potential gains at the outset of the negotiation (Allred 2000; Sander, Peppet, and Tulumello 2000). If negotiators are genuinely open, their behavior will facilitate the exchange of information that is necessary to move the process of value creation forward; but this openness might be exploited by negotiators who are more concerned with value-claiming. Conversely, if negotiators are competitive in claiming value, they might limit or prevent the achievement of joint gains through give-and-take processes. The preponderance of research evidence suggests that negotiators tend to assess their counterparts as more competitive and less trustworthy than they really are, and, as a result, they systematically ignore opportunities for value creation (Bazerman and Neale 1992; Bazerman, Baron, and Shonk 2001).

Third, negotiators need to deduce the nature of the negotiation problem and its perceived constellation. This includes consideration of all aspects and contingencies, such as the involved parties, the agenda, and the

issues that are perceived by the negotiators to be relevant. Negotiators do not usually know with certainty all issues relevant to their counterparts, let alone the counterparts' options and possibilities. One way to deal with this problem is to build on the experience of previous negotiations and proactively restructure existing constellations by breaking deadlocks and facilitating the negotiators' willingness to reach agreements (Sycara 1991). But restructuring the negotiation generates the need to create a framework for the give-and-take processes of negotiation, particularly if the parties conduct complex, multilateral exchanges that involve electronic data interchange, multiple products and items, joint research and development, or joint promotion and communication activities. A framework for such multilateral give-and-take processes must be articulated and shared by the involved negotiators. Implicit perceptions must be transformed into explicit understandings that guide and clarify the process.

In this article, I seek to address these three problems from a negotiation perspective. Researchers have analyzed, classified, and described the problems that negotiators face, but little work has been done to uncover the ways that negotiators balance their need for certainty and calculability in their exchanges with their need to remain flexible in order to embrace new business opportunities.

One way to achieve this balance is to negotiate umbrella agreements (Mouzas and Ford 2006). An umbrella agreement is not concerned with *immediate* give-and-take decisions; instead, it is a joint consent that explicitly spells out a framework of rules and principles that flexibly guide *future* give-and-take decisions (Crone 1993; Krüger 2003).

This article, which is based on empirical research conducted between 2002 and 2005 in manufacturer-retailer networks involving fast-moving consumer goods manufacturers and grocery retailers in Germany and the U.K., seeks to answer the following research questions: What can we learn about negotiating umbrella agreements from existing negotiating theory? What are the best tools for analyzing these agreements?

Contemporary theoretical concepts such as the best alternative to a negotiation agreement (BATNA), zone of possible agreements (ZOPA), interests, issues, positions, or wise trades are useful constructs through which we can analyze a negotiation, but it is questionable whether these concepts provide a framework for continuous interaction. What are the elements that constitute a framework for give-and-take processes, and what is the role of umbrella agreements? What can we learn from the practice of umbrella agreements? What are the theoretical and managerial implications of umbrella agreements?

In this article, I argue that negotiators need to differentiate between *agreements* and the *framework* in which agreements are made. Moreover, I argue that negotiators are better able to maximize their joint gains by creating umbrella agreements that define a framework for possible future agreements.

This article includes a discussion of some of the problems that contemporary negotiators face that umbrella agreements are designed to address. I also describe the conceptual dimensions of umbrella agreements as frameworks for negotiation. I analyze, based on empirical research, how fast-moving consumer goods manufacturers and grocery retailers negotiate umbrella agreements, the content of these agreements, the motivations of the negotiators involved, and their experiences within the agreements. Finally, I set out some proposals for the future negotiation of umbrella agreements that I believe will be relevant to scholars, business leaders, lawyers, diplomats, and government officials as well as to those concerned with innovations in the field of negotiation or the application of new practices in dispute resolution.

What We Can Learn from Negotiation Theory

More than forty-five years ago, Thomas Schelling (1960) observed that negotiators achieve much better coordination and cooperation when they are able to rely upon focal points. This observation questioned some of the conceptual underpinning of negotiation theory that can be traced back to constructive problem-solving (Follett 1940) as well as to game theory and decision analysis (Luce and Raiffa 1957; Nash 1950). Investigating the strategy of conflict, Schelling criticized traditional game theory and decision analysis and discussed focal points as a framework of mutually perceived expectations, shared appreciations or preoccupations, obsessions, and sensitivities to suggestions.

The decades that followed marked considerable advances in psychology and behavioral studies, including for example, the development of theories of choices, values, and frames (Kahneman and Tversky 1984). Building on research in psychology and organizational behavior, the search for optimal and rational solutions for value creation has broadened in the last decade to include examinations of the effect of time (Mannix, Tinsley, and Bazerman 1995), the dynamics of diversity and teams (Jehn, Chadwick, and Thatcher 1997; Jehn, Northcraft, and Neale 1999; Jehn and Mannix 2001), how to deal with uncertainty (Wheeler 2004), and many other dynamic social and personal factors such as perceptions and barriers to dispute resolution, problem restructuring, negotiation styles, and behavioral decisions (Bazerman and Neale 1992; Bazerman et al. 2000; Fisher and Ury 1981; Mnookin 2003; Mnookin, Peppet, and Tulumello 2000; Mnookin and Susskind 1999; Neale and Bazerman 1991; Nelson and Wheeler 2004; Sycara 1991; Thompson 2001).

Intriguing research on anchoring, preconceptions, and errors that people usually make when forming judgments and decisions has also emerged. Accordingly, negotiators sometimes examine extraneous information (Kahneman and Tversky 1984; Lax and Sebenius 2004) and often assess one side as more competitive and less trustworthy than the other (Allred

2000; Bazerman and Neale 1992). Negotiators, researchers have shown, thus consistently overlook opportunities for wise trades (Bazerman, Baron, and Shonk 2001). Wise trades are exchanges among actors who have the ability to see the broader picture and the connectedness of their actions. They require a shift in actors' self-perception from "self as independent" to "self as part" of a larger whole (Bigelow 1992). This is vividly illustrated by negotiation over such environmental issues as global climate change and how to address it, which fail to reach settlements after many negotiations (Wade-Benzoni et al. 2002).

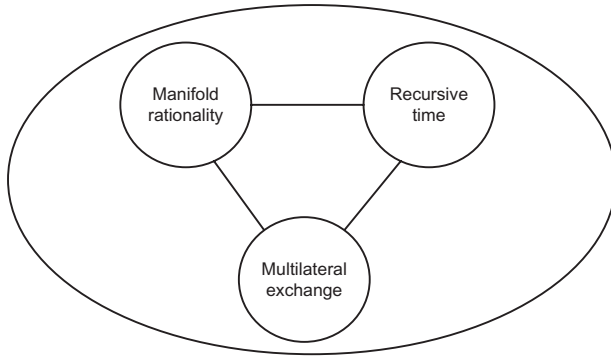
The work of David Lax and James Sebenius (1986) epitomizes many of the past theoretical advances and also offers prescriptions for the involved parties. Their later work (Lax and Sebenius 2002, 2004) challenges the prevalent view of negotiation as a process that involves a set of interpersonal dynamics and tactics by labeling it as a "one-dimensional" approach. Instead, they propose a "three-dimensional" approach, where the second dimension, the so-called "deal-crafting," focuses on the substance of the effort to create joint value, and the third dimension involves entrepreneurial moves in which parties can advantageously change the negotiation problem. Sebenius and Lax (2004, 1991, 2002; Sebenius 1992) also emphasize the importance of focusing on differences instead of similarities. They consider differences in interests and perceptions to be the raw materials of the negotiation and the means to create joint gains. Furthermore, they distinguish between underlying interests, issues brought to the negotiation table, and the positions taken. They further claim that actors' alternatives to negotiated agreement play a large role in shaping negotiations and that changes in the actors' alternatives to negotiation may have a greater effect on the outcome than bargaining tactics used during negotiations.

Actors' alternatives may change over time (Sebenius 1992). This can occur either because of changes in circumstances, the requirements of the negotiator, or the actions of the other party. External circumstances, such as wars or disasters, may intervene. Negotiating parties may receive new competitive offers from third parties or may need to reconsider the exclusivity of their supply or their subcontracting policy. New assignments or requests from counterparts, the adjustment of volumes and prices, as well as necessary changes with regard to terms of payment, may require substantial renegotiation of previous agreements (Hart 1995; Tirole 1986). The acknowledgement that many negotiations are not single-shot events and that continuous negotiation may be required to achieve a sustainable agreement reminds us of the need to differentiate between present negotiation decisions and the framework upon which future negotiation decisions can be made.

Umbrella Agreement as Negotiation Framework

Political, legal, and business negotiations have evolved over time in response to the changes in implicit rules and common principles. People,

Figure One
Umbrella Agreement as a Negotiation Framework



businesses, governments, and courts rely on these rules on the basis of a sedimented experience, which is their accumulated past experience; they also rely on the use of principles that can be defined as “optimization commands” because they contribute to a rationalization of existing rules (Dworkin 1967). The challenge of many political, legal, and business negotiations is to transform the implicit rules and principles that are embedded in customs and commercial practices into explicit umbrella agreements that provide people with the structure and guidance they need to conduct further negotiations effectively (Crone 1993; Mouzas and Ford 2006).

Umbrella agreements, therefore, provide a framework for the involved parties; and they appear as “constitutional orders,” which are orders (Sabel 1993) that regulate the ongoing negotiation between actors and translate the consequences of fulfilling or breaching promises (Krüger 2003). Three conceptual dimensions are applied in this article to describe some significant aspects of this negotiation framework. These aspects are drawn from previous work on developing insight in business networks (for an analysis of these, see Mouzas, Henneberg, and Naudé 2004). These are (1) multilateral exchanges, (2) manifold rationality, and (3) recursive time. (See Figure One and the definitions below.)

To deal successfully with the complexities of *multilateral exchange*, *manifold rationality*, and *recursive time*, negotiators could attempt to articulate an umbrella agreement that provides a framework for future negotiations. Negotiators’ umbrella agreements may include “hard elements,” which are measurable in terms of tangible deliverables or key performance indicators, unique methods, practices, or procedures, as well as “soft elements” such as mutual learning, data interchange, and joint

innovation endeavors. Both hard and soft elements transcend the negotiators' task-specific knowledge base and allow parties to explore and capitalize on their inherent potentials, which are often hidden from the other party.

Manifold Rationality

Negotiators' logic is manifold (or varied), in the sense that it emphasizes certain features of a negotiation that are important for individual managers while it diverts attention from other issues that might be important for other negotiators. Consider the failed negotiations for a merger between Deutsche Bank and Dresdner Bank, which would have formed the largest bank in the world. Barely one month after announcing *a merger of equals*, Deutsche Bank high-handedly argued that Dresdner's division of investment banking, DKB, needed to be sold in parts or in its entirety. Dresdner's immediate response was that the integration of the process in investment banking activities should be an essential part of the entire agreement to create a leading bank. Deutsche Bank accused Dresdner Bank of inflexibility. The negotiations for a merger were called off as the two parties applied different rationalities on how the deal should work in practice. While the two parties agreed to proceed to an integration of their businesses, they neglected to articulate and manifest their shared understanding of the "spirit of deal" (Fortgang, Lax, and Sebenius 2003). Furthermore, individual negotiators, for example, the heads of certain divisions, are often likely to have personal reasons that differ from what is "right" for their organization (Webster and Wind 1972).

A manifestation of manifold rationality can be found in the distinction between *instrumental rationality* ("Zweckrationalität") and *value rationality* ("Wertrationalität") as described by Max Weber (1956). According to Jon Elster (2000), *value rationality* is guided by the consequences or end of the process, whereas *instrumental rationality* is concerned with the means. Understanding and tolerating another negotiator's underlying logic seems to be critical to achieving effective give-and-take negotiation (Perrow 1999).

Recursive Time

Routines and institutionalized patterns of negotiation such as periodic business reviews, summits, periodic task reviews, regular negotiations, and contract negotiations among organizations are manifestations of recursive (or recurrent) time. Examination of these phenomena casts doubt on views of time as a linear process. They invite us to understand time as recursive practice and to look at the achievement of joint consent among negotiators as an indeterminate outcome of these recurrent practices. For example, annual negotiations between industry and trade usually take place during September and December while periodic business reviews are often

scheduled quarterly. Negotiators' time perspectives are often not aligned, although rigid exchange schedules may make the opposite seem to be true.

Scott Snook (2000) illustrated the significant differences in the time perspectives of actors during a give-and-take process by analyzing the different time expectations for deliberative processes, such as landing a plane among fighter pilots, AWACS flight controllers, and ground controllers. Similarly, negotiators need to understand the characteristics and the importance of time for other actors as well as the recurrent practice itself.

Multilateral Exchange

The achievement of consensus is an amalgamated outcome of heedful give-and-take processes at numerous different levels. A typical give-and-take business negotiation process will comprise several exchanges at the regional as well as the headquarters levels, plus a plethora of related information-gathering activities, often with third parties such as professional consultants and public bodies (for example, trade associations or patent offices). Consider, for instance, the multilateral exchanges between two companies: these may include product and service delivery, stock replenishment, price management, promotions, trade conditions and allowances, as well as communication and information systems for order processing and billing (Buzzell and Ortmeyer 1995). In this way, multilateral exchanges invariably introduce complexity and lack of transparency into the negotiation process.

Furthermore, exchanges can be task-specific as identified above as well as nontask-specific, for example, informal gathering and networking. Negotiators' willingness to move beyond existing task-specific exchanges and to engage in thoughtful interactions is critical to their ability to embrace new possibilities and develop alternative perspectives of their surrounding networks. A framework that links exchanges between various organizational levels and encourages coordination will increase the thoughtfulness of these multilateral exchanges.

Research Method

This study of umbrella agreements is part of a wider research project into the ways in which fast-moving consumer goods manufacturers and grocery retailers negotiate and make deals in complex business networks. One of the most intriguing empirical findings of that research is the importance of renegotiation of agreements between companies in continuing relationships. This finding encouraged us to examine more closely how companies deal with the complexities and uncertainties of negotiation.

By using case study research (Easton 1998; Eisenhardt 1989; Halinen and Törnoos 2005; Ragin 1992; Tsoukas 1989), we have looked at how manufacturers and retailers use umbrella agreements as a way of dealing with the uncertainty and complexity of negotiation. Primary data

collection, which was undertaken between 2002 and 2005, comprised fifty-seven in-depth interviews and twelve company workshops with eighty-four senior managers. We focused on collecting contemporary manifestations of interfirm agreements and also observed annual trade negotiations and conducted personal interviews.

We logged our field observations of interactions with negotiators (including impromptu chats and meetings) shortly after they occurred into a self-devised field tracking system. These were entered into a “chronological events list” and served as a filter or index to the wider set of observations. This was crucial in the collection of umbrella agreements because it helped us carry out a closer examination and triangulation of primary data. We also made periodic entries into a field diary to supplement the collection of more formal material about the agreements gathered; these diary entries also provided reflections on the research as a whole. We also retained for analysis electronic copies of contract drafts that we received via e-mail. In this article, the names of some companies have been changed to preserve anonymity.

Our analysis focused on the complexity of the negotiations between companies and on the anatomy of their agreements. It involved a critical examination, evaluation, categorization, and classification of the umbrella clauses. The three conceptual dimensions — multilateral exchanges, manifold rationality, and recursive time — were used as analytical tools to organize and to make sense of the data.

Our primary goal in data analysis was to link the theoretical knowledge with the empirical observations. The iterative examination of interview statements, comments, and observed negotiations helped us identify a number of focal points, which are defined as prominent or salient coordinates of perceived expectations, shared appreciations, or sensitivities (for a review, see Robert Sudgen 1995). The analysis encouraged these focal points to emerge from the data rather than imposing them on the data. By reducing the empirical world of umbrella agreements to focal points, it was possible for us to connect them to conceptual dimensions that are general and abstract, but nonetheless dynamic formulations. This enabled us to characterize the phenomena that we observed and define their outcomes.

Umbrella Agreements in Practice: The Evidence from Manufacturer–Retailer Networks

Manufacturer–retailer networks comprise fast-moving consumer goods manufacturers such as Procter and Gamble, Unilever, Coca-Cola, Philip Morris, and Johnson and Johnson, and retailers such as Wal-Mart, Metro, Rewe, Aldi, and Tesco (Corstjens and Costjens 1995). Retailers reach millions of consumers who demand consumer goods to satisfy their basic needs (Villas-Boas and Zhao 2005). Manufacturers have a wealth of

experience in the production and marketing of strong consumer brands in specific product categories such as food and drink, laundry, cleaning, and tobacco products, while retailers, with their large number of outlets, have direct contact with consumers by offering them a broad range of fast-moving consumer products.

Consumers are not merely the final stage in the manufacturer–retailer network. Their buying behavior, which is influenced by socioeconomic and cultural trends, provides the primary stimulus of action and interaction among manufacturers and retailers. A manufacturer–retailer network is, therefore, characterized by the high degree of connectivity between manufacturers and retailers. Manufacturers’ ability to supply retailers and retailers’ ability to supply consumers does not rely entirely on their own internal assets. The relationship of manufacturers and retailers with third-party suppliers, logistics companies, banks, insurance companies, consulting agencies, and advertising agencies can be seen as external resources that enable them to conduct their business (Mouzas and Araujo 2000).

To understand umbrella agreements in the context of manufacturer–retailer networks, it is essential to look at companies’ key concerns. Fast-moving consumer goods manufacturers do not sell anonymous products; they sell *brands*. Brands are differentiated from other anonymous products by the consumers’ loyalty to them. Manufacturers must negotiate with a relatively small universe of major retailers about such issues as shelf space, pricing, and promotional terms. In contrast, retailers are concerned with the competitiveness of their outlets, the development of a distinct image among consumers, the growth of their own retailer brands, and the profitability of their businesses.

Regular rounds of price increases create a significant major friction between manufacturers and retailers. A product’s leading manufacturer will usually initiate a price increase, which will often be followed by other manufacturers of similarly branded products. Manufacturers often announce price increases unilaterally by issuing a new or revised price list. In turn, retailers are concerned with the increasing cost of goods bought from manufacturers because they have to pass on the higher prices to consumers. This prompts retailers to introduce “variable pricing” in which final consumer prices change continuously according to costs and encourages them to launch their own retailer brands produced by third-party manufacturers. Retailer brands not only offer lower prices to consumers; they also offer better trade margins to retailers. Therefore, retailers show resistance toward the higher prices of branded products and enthusiastically promote their own labels by fostering cooperation with third-party manufacturers.

Despite this friction, manufacturers and retailers recognize their interdependence and seek umbrella agreements that pave the way toward a jointly decided strategy. This effort requires multiple levels of interface and interfirm negotiation. (See Table One.) The interface between manufacturers and

Table One
Umbrella Agreements Between Manufacturers and Retailers

Retailers	Negotiating Umbrella Agreements	Manufacturers
Headquarters Purchasing Sales Marketing	Listing of product items Trade allowances Retailer brands Advertising decisions Joint promotions Information disclosure	Headquarters Key account management Marketing Logistics
Regional level/Business center/ Distributors	Electronic data interchange Wholesale management Continuous stock replenishment Promotions	Regional key account manager
Outlets Store manager	Stock management Merchandising Displays/Promotions Contacts with consumers	Sales director Sales representatives

retailers is linked with their evolving organizational structures, for example, key account management, purchasing or category management, while inter-firm negotiation is based on institutionalized forms of repeated interactions, for example, annual trade negotiations.

Umbrella agreements are negotiated at headquarters level, where the historically developed interface is between the retailers' purchasing departments (purchasing managers) and the manufacturers' sales departments (key account managers). Purchasing and key account managers are becoming sophisticated, powerful agents across different functions; they are usually experienced, senior managers responsible for the establishment and development of client/customer relations, as well as the internal coordination of different functions. In designing umbrella agreements, purchasing and key account managers draw on the expertise of other staff departments, such as legal, marketing, or operations. Exit scenarios or termination clauses, for example, are drafted by corporate lawyers in the legal department.

Nonetheless, the managers who negotiate umbrella agreements are not necessarily the ones who must forge and live with the specific contracts that follow. This alignment problem often generates internal friction between different departments or functions; for example, a traditional friction exists between purchasing and sales managers or between key account and brand managers. At the regional and business center level, the interface is between the regional key account manager or sales director and the head of the regional business center or distributor. At this level, the representatives of retailers and manufacturers renegotiate and agree on activities within the framework of umbrella agreements concluded at the head-quarter level. The agreed activities will then be implemented at the outlet level through cooperation between the manufacturers' sales representatives and the retailers' store managers.

Let us now examine how managers who negotiate umbrella agreements plan and execute their strategies. In the annual negotiations of umbrella agreements that take place between September and December, manufacturers' key account managers contact the purchasing managers of key retailers and ask for the listing of brands (shelf space), offering "trade allowances" as a fee or payment for the distribution that brands obtain via retailers (Sullivan 1997). Because of the critical importance of this issue, key account managers are often supported by specialists such as business managers or logistics managers.

In theory, negotiators are driven to maintain and develop their existing relationship. Both parties recognize the value of their relationship and acknowledge their determination to create joint gains. In actuality, however, particular concerns (focal points), for example, the assortment of products or services, exclusivity, terms of payments, or liability issues, frame the negotiations. (See Table Two.) They thus formulate agendas and define a

Table Two
An Example of Umbrella Agreement

Framework of Focal Points	Umbrella Clauses
Product range/services	Laundry and cleaning products.
Exclusivity	Both parties have the right to obtain competitive offers at any time.
Information	Parties defined three performance indicators. Mutual notification regarding all future capital investment and R&D.
Notification	Notification regarding product damages needs to be made within two weeks.
Subcontracting	Subcontracting is only possible upon consent.
Assignment	All requests need to be made in writing. Verbal requests need to be confirmed in writing.
Volume/Price	To be agreed/continuous stock replenishment.
Invoicing	Unilateral price determination. Unless otherwise agreed, on a monthly basis. Payment in sixty days; delivery cost is paid by the supplier. (Delivered duty paid.)
Renegotiation	Annual renegotiation/business reviews quarterly. Any controversy shall be finally settled by arbitration. (International Chapter of Commerce.)
<i>Force majeure</i>	Parties bear no liability for damages occurred as a result of war, political unrest, strikes, lockouts, and governmental interventions.
Guarantee	The retailer reserves the right to demand the elimination of deficiencies or to allow the return of products within twenty days at suppliers' cost.
Liability	The obligation to remedy deficiencies applies also to services obtained from subcontractors.

**Table Two
(Continued)**

Framework of Focal Points	Umbrella Clauses
Secrecy	All information exchanged is confidential and shall not be made available to third parties without written consent of the other party.
Property rights	No transfer of property rights. Supplier ensures that no third person has obtained property rights.
Saving clause	Unless it is of major importance, invalidity of one or more clauses will not have any effect on the umbrella agreement as a whole.
Legal venue Amendments	London/U.K. The supplier has the obligation to revoke in writing any orders that she does not wish to accept.
Addition Duration	Need to be made in writing. Indefinite agreement/annual renegotiation.
Termination	Each party has the right to terminate the agreement immediately with regard to a particular type of services.

range of possible outcomes that may fail to reflect their theoretical desire to achieve joint gains.

Finally, the outcome of the negotiations is determined by objectified measures of resources and market performance. For example, market shares for individual brands or items, trade allowances that manufacturers are willing to pay, competitive offers, and the weight of retailer brands will exercise a significant impact on the outcome of the negotiations. In this way, short-term conditions can take precedence over the wish to maintain and develop a business relationship. Retailers with discount outlets, such as German retailer Aldi, reserve up to 80 percent of their shelf space in specific product categories for their own retailer brands. Other retailers, such as Marks and Spencer in the U.K., dedicate 100 percent of their shelf space to their own retailer brand *M&S*.

Shelf space is just one of the key issues in the annual negotiations between manufacturers and retailers. Other major issues are trade allowances (the fees that manufacturers pay to obtain listing within retailers),

retailer brands, promotions, or other programs as well as information disclosure. (See Table One.) These issues are inextricably linked. Manufacturers may underwrite heavy advertising and promotion spending in consumer communication for favorable shelf space and thereby pay less in trade allowances. Consumer advertising and promotion activities contribute to increased consumer off-takes (sales to final consumers) and thus minimize retailers' risk of listing brands with weak consumer demand.

Many of these "wise trades" between manufacturers and retailers are worked out in more specific give-and-take contracts at regional, business center, or distributor level. The conclusion of specific contracts, however, is always made under the aegis of an umbrella agreement, and the included umbrella clauses guide the conclusion of further contracts. For example, the umbrella agreement may include the appointment of a certain manufacturer as a "category captain," which is equivalent to the status of "preferred supplier." In this case, the retailer will work exclusively with the appointed manufacturer (category captain) in optimizing the planograms of the retailer's shelf space. (A planogram describes the allocation of shelf space.)

Similarly, the umbrella agreement may include an exclusive production and distribution of retailer brands. If this is the case, the manufacturer will produce the retailer's own labels, and this agreement will provide the umbrella for further specific contracts in the future. The primary concern of umbrella agreements is not with the specification of give-and-take contracts or concrete transactions but rather with rules and principles that allow the exchange of information to create future joint gains. Hence, manufacturers and retailers regard the use of information technology as a major step toward managing the increasing data flow from the consumer's decision, up to merchandising and production planning. It tightens the connectivity between retailers and manufacturers and contributes to a reduction in slack and administrative costs. Nevertheless, a number of business agreements might include immediate contractual decisions leaving some of the terms open. In these cases, it seems to be more appropriate to view these contractual arrangements as open-terms agreements (see Gergen 1992).

A typical umbrella agreement negotiation starts with the definition of the scope of business, which includes the listing of types of products or range of services and usually moves on to the specification of clauses that regulate an ongoing negotiation and deal making (see Table Two). These clauses set out a framework of focal points according to which voluntary and informed exchange may take place. Table Two presents an example of twenty different umbrella clauses. These clauses deal with such sensitive issues as exclusivity, information flow, confidentiality, subcontracting, warranties, property rights, and termination. They also emphasize the importance of renegotiation and the inclusion of extreme contextual contingencies in the form of *force majeure* clauses, which protect parties from

liability if forces beyond their control such as political unrest, strikes, lockouts, governmental interventions, and natural disasters prevent fulfillment of their contractual obligations.

A closer examination of the negotiated umbrella agreements between manufacturers and retailers reveals a number of significant variations. The main variations relate to the existence of a diversity of accepted rules and principles, as well as diversity of possible focal points. Manufacturers and retailers make various business assumptions, have their idiosyncratic sensitivities, and define different priorities. Some of the parties were concerned with the transfer of property rights or confidentiality, while other parties were more concerned with risks, warranties, or the inclusion of *force majeure* clauses.

Negotiated umbrella agreements demonstrate a variety of accepted rules and principles regarding invoicing, terms of payment, and price variation. Strong manufacturers, for example, include umbrella clauses that confer powers to them to determine prices unilaterally. Similarly, manufacturers with strong bargaining power include umbrella clauses that restrict the retailers' ability to revoke orders after manufacturers' production start. The empirical evidence shows that some umbrella agreements may restrict or confer powers on parties to vary their initial position or renegotiate some of their own duties. For example, umbrella agreements may confer powers on retailers to have a continuous stock replenishment according to consumer off-takes.

Umbrella agreements between manufacturers and retailers also demonstrate a variety of notification and termination procedures. For example, umbrella agreements in established business relationships often state that, unless otherwise agreed, the cooperation between the parties is terminated at the end of a calendar year, giving one year's prior notice.

Discussion of Results

A joint consent on umbrella clauses constitutes a framework of focal points that guides further negotiations or deals that may be conducted and concluded in the future. There are two important consequences. The first is that umbrella agreements between consumer goods manufacturers and grocery retailers do not predetermine their future selection processes. Retailers' ordering process, for example, may vary from region to region and it will finally be determined by the evolving consumer demand as indicated by the available consumer-purchasing data. For this reason, retailers are likely to dictate a continuous stock replenishment based on consumer demand.

The focal points presented in Table Three demonstrate that the function of an umbrella agreement is to provide a framework for all crucial aspects of an ongoing negotiation process. Thus, umbrella agreements function as a manifestation of the parties' understanding that exchanges are capable of being agreed according to a preexisting set of concerns (focal points) and that

Table Three
Umbrella Agreements as Framework of Focal Points

Conceptual Dimensions of a Negotiation Framework	Focal Points
Manifold rationality	Underlying interests/objectives Sensitivities regarding secrecy Concerns about liability Arbitration/ <i>force majeure</i> Priorities and exclusivity
Multilateral exchange	Definition of the scope of business Property rights Regulation of exclusivity Regulation of information flow Notification processes
Recursive time	On-going business reviews Annual trade negotiation Possible renegotiation Termination/Renegotiation dates Prices and volume to be agreed

it is the intention of the parties to do so (Crone 1993; Krüger 2003; Mouzas and Ford 2006). The fact that important terms of exchange, such as prices and volumes, have been deferred for future agreement may be a significant rationale, indicating that parties to an umbrella agreement prefer to remain flexible and do not intend to be bound.

As Table Three illustrates, first, umbrella agreements attempt to articulate and manifest the manifold rationalities of negotiating parties by drawing the “mental maps” of negotiating parties. These may include performance indicators, underlying interests or aims, as well as sensitivities and priorities. The existence of manifold rationalities is vividly demonstrated in the parties’ preconception of possible liabilities or the impact of supervening events such as *force majeure* (see Table Two).

Another illustration of manifold rationalities is the inclusion of “saving clauses” or “exclusivity/nonexclusivity clauses” into the agreements between manufacturers and retailers. For example:

Unless of major importance, invalidity of one or more clauses will not have any effect on the agreement as a whole (the saving clause from the Bavaria and SPI agreement).

Alders has the right to obtain competitive offers at any time (the nonexclusivity clause from the Meds and Alders agreement).

Second, umbrella agreements mirror the recursive nature of time by incorporating processes of continuous performance evaluation and renegotiation as shown by institutionalized forms of business reviews or annual trade negotiations. Furthermore, the deliberate decision of the parties not to include an agreement on prices and quantities creates space for flexibility and maneuverability, as in, for example, the following agreement language:

Re-negotiation is possible at any time based on shared experiences and learning (the renegotiation clause from the Ameco and Waitsome agreement).

Unless negotiation is requested in writing by one of the parties three months before, prices are valid until 12/31 (the renegotiation clause from the Progress and Econ agreement).

Third, umbrella agreements represent a coping strategy for dealing with the increasing complexity of multilateral exchange between the parties. In the context of manufacturer-retailer networks, multilateral exchange will comprise several layers of exchanges with regard to multiple products and items, prices, shelf space, or promotion terms. The most critical aspects of multilateral exchange are not the definition of the scope of business or specification of the exchange *per se* but rather the arrangement of a mutual information flow. Mutual and continuous information exchange encourages appreciation and understanding and thus contributes to the sustainability of genuine consent. Exchanges between parties that are not based on genuinely agreed action cannot be sustained (Raiffa 1982; Sebenius 1992). Information exchange is not only a retrospective process; it may comprise intentions, plans, and future investments, or it may include descriptions of how the two parties wish to work together. Some examples:

The two parties expect a mutual notification regarding all future investment or development projects (the notification clause from the Alpha and Meiden agreement).

This agreement confirms our understanding of how to work together (the information clause from the Unis and Engel agreement).

In summary, umbrella agreements demonstrate a set of shared focal points or concerns that help parties cope with their manifold rationalities, the recursive nature of time, and multilateral exchanges.

Conclusion

In this article, I have discussed the functioning of umbrella agreements, which are private arrangements between parties that provide an explicit framework for ongoing negotiation and deal making. These arrangements

are not concerned with immediate “deal-crafting” or actual give-and-take decisions. Instead they explicitly spell out a framework of rules and principles in accordance with which *future* give-and-take decisions can be made.

One could argue that the negotiation of umbrella agreements is related in spirit to “entrepreneurial moves” by which negotiators can advantageously change the negotiation problem and its perceived constellation (Lax and Sebenius 2002, 2004). These entrepreneurial moves can be of significant value to stronger parties in asymmetrical negotiations because they have the ability to impose time-tested rules and principles on the other party. A stronger party can incorporate the rule of unilateral price determination or continuous stock replenishment according to a rolling forecast and can restrict certain rights or duties. Many umbrella agreements, such as those in manufacturer-retailer negotiations are, therefore, self-enforcing because the stronger party is able to incorporate efficient nonlegal rules and principles for dealing with contingencies in such a way that they do not have to rely on legal enforcement (Charny 1990; Effron 1989; Scott 2003).

Nevertheless, Lax and Sebenius (2002, 2004) define “entrepreneurial moves” (a “third dimension”) as unilateral moves *away* from the negotiation table that are designed to respond more effectively to the first two dimensions: *interpersonal dynamics* and *deal-crafting*. Umbrella agreements likewise articulate the contextual parameters for specific negotiations, but, unlike unilateral moves, umbrella agreements are jointly created and decided between the parties. The interdependence that is inherent to these umbrella agreements necessitates continuing negotiation and deal making.

By negotiating umbrella agreements, parties balance their need for certainty and calculability in their give-and-take processes with their need to remain flexible so that they may embrace existing or emergent opportunities. Parties are thus better able to maximize their joint gains over time. This is possible because umbrella agreements are manifestations of consent that deal successfully with (1) manifold rationalities, (2) recursive time, and (3) multilateral exchange.

I have applied these three conceptual dimensions in order to examine examples of umbrella agreements in the context of manufacturer-retailer networks. This particular industry is noteworthy for the high degree of connectivity and interdependence among the actors. Umbrella agreements can be important in other realms, such as service industries, outsourcing, strategic alliances, or international diplomacy.

However, an umbrella agreement is particularly useful if specific give-and-take processes between two parties occur regularly. The parties to such an umbrella agreement are usually not required to specify new terms in their future give-and-take contracts. Hence, umbrella agreements

demonstrate two universal features: First, they reduce the costs (time and effort) of selecting, managing, and overseeing single transactions. Second, they maximize the parties' possibilities for embracing inherent opportunities through an ongoing negotiation. These findings suggest that negotiators would be well advised to consider recognizing the advantages of umbrella agreements as I have described them in this article and consider them in their ongoing negotiations and deal making.

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