Not Extended, Not Ended: Can the United States Reshape the USMCA Without Withdrawing?

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1. Introduction

The United States-Mexico-Canada Agreement (USMCA) replaced the North American Free Trade Agreement in July 2020. It sets rules on tariffs, investment, digital trade, intellectual property, labour and environmental protection (Villarreal, 2024). The United States decided on 1 July 2026 not to extend the agreement in its current form, but this decision did not end it. Existing commitments remain in force while the future of North American trade is under negotiation. This creates a tension between legal continuity and political pressure for change (Bond et al., 2026).

The central question is whether Washington can change the obligations that govern North American trade through the review process and separate bilateral agreements with Canada and Mexico, without formally withdraw-

ing. Deals between two countries raise questions about their compatibility with trilateral commitments and about the rights of the country left outside the negotiations. This article analyses the treaty framework of the USMCA and the rules of public international law on treaties. It addresses United States domestic law only where it governs implementation, and it excludes domestic politics and the economic effects of specific measures.

Commentary so far has concentrated on the review process and investor protection (Bond et al., 2026; Brown de Vejar et al., 2026). This article assesses the position of the country left outside a bilateral deal under Article 41 of the Vienna Convention on the Law of Treaties. It argues that the United States can obtain substantial changes to the terms of North American trade while remaining in the agreement, but only within limits that the treaty and general international law set. It proceeds in three parts. First, it distinguishes non-extension from withdrawal. Second, it examines bilateral negotiations within the trilateral framework. Third, it sets out the legal limits that protect the remaining party's rights, before concluding.

2. Non-extension is not withdrawal

An agreement does not have to end to become a bargaining tool. The July 2026 decision left the USMCA in force but placed its future at the centre of negotiations. The United States can decline to extend the agreement without formally withdrawing from it.

The distinction begins with Article 34.7. The USMCA has a 16-year term, running from 1 July 2020 to 1 July 2036. Its six-year review is a checkpoint, not an expiry date: each party confirms in writing whether it wishes to extend the agreement's term. If a party does not confirm, existing commitments do not end. Instead, annual reviews follow for the rest of the term and give the parties repeated chances to agree on a new 16-year period. If the parties never agree, the agreement expires in 2036 (USMCA, 2018, Article 34.7).

Withdrawal is governed by a separate provision. Under Article 34.6, a party may leave after giving six months' written notice, and the agreement continues between the other two parties (USMCA, 2018, Article 34.6). Declining extension, by contrast, keeps all three countries within the existing framework. This turns a procedural provision into leverage. Uncertainty about tomorrow does not rewrite today's rules. The remaining question is whether bilateral arrangements can deliver change without undermining commitments owed to the third party (Brown de Vejar et al., 2026).

3. Bilateral negotiations within a trilateral agreement

With the agreement's future unsettled, the United States has turned to a second strategy: negotiating with each partner separately. Between May and July 2026, Washington and Mexico City held three rounds of formal bilateral negotiations. A fourth round, planned for September 2026, was

postponed because of scheduling conflicts (Reuters, 2026). Mexico said in mid-October that it would take place before the end of 2026 (Por Esto, 2026). The United States and Canada have announced no official negotiations connected to the review (Kitamura & Trachtenberg, 2026). Bilateral bargaining, however, is not bilateral lawmaking, because the USMCA binds three countries, not two, and not one.

Three different concepts are often blurred together in this debate. A "negotiation" is an exchange between two governments that does not by itself modify any treaty obligation. A "bilateral instrument" is a side letter or ancillary agreement concluded between those two countries only. An "amendment" is a change to the trilateral agreement itself. Article 34.3 governs amendments: an amendment enters into force 60 days after the last party has notified the others in writing of its approval under its domestic legal procedures (USMCA, 2018, Article 34.3). All three parties must therefore approve, including the one left outside the negotiation.

The treaty's own history shows that bilateral instruments are not unknown to the trilateral framework. When the USMCA was signed in 2018, the United States also exchanged letters with Canada and with Mexico on future national security tariff measures under Section 232 of the Trade Expansion Act of 1962, a United States trade law. These letters bound only their two signatories. They neither changed the agreement's text nor purported to limit the third country's rights (Akhtar et al., 2026).

Permission for some arrangements, however, is not permission for all. A side letter that manages a shared problem differs from an arrangement that contradicts trilateral commitments or reshapes market access at the third country's expense. The latter raises the issue of whether a formal amendment is the only lawful path (Brown de Vejar et al., 2026).

4. The legal limits: protecting the remaining party's rights

When two parties to a three-party treaty modify its rules between themselves, international law supplies a specific framework. That framework is Article 41 of the Vienna Convention on the Law of Treaties, which governs modification between only some of the parties, known as *inter se* modification (Vienna Convention on the Law of Treaties, 1969, Article 41). The United States signed but never ratified the Convention, whereas Mexico ratified it in 1974 and Canada acceded to it in 1970 (United Nations Treaty Collection, n.d.). The United States treats many of its rules as reflecting customary international law, meaning state practice followed out of legal obligation (United States Department of State, n.d.). Whether Article 41 specifically has that status is less settled.

Article 41 asks first whether the treaty itself provides for modification between some of its parties. If it does not, the modification must meet three conditions: the treaty must not prohibit it, it must not affect the other parties' enjoyment of their rights or performance of their obligations, and it

must not concern a provision from which derogation is incompatible with the effective execution of the treaty's object and purpose as a whole. The parties must also notify the others, unless the treaty provides otherwise (Vienna Convention on the Law of Treaties, 1969, Article 41).

The USMCA answers the first question only partially. Article 2.4(3) permits two or more parties to accelerate tariff elimination, so some bilateral flexibility is built in (USMCA, 2018, Article 2.4(3)). Beyond that exception, the test sorts arrangements into two groups. A deal that supplements the agreement leaves the third country's rights untouched and raises no Article 41 problem. A deal that reallocates those rights is incompatible with Article 41. If Washington and Mexico City agreed on new rules of origin, which determine whether a good qualifies for tariff-free treatment, and those rules restricted Canadian market access, Canada's treaty rights could be affected. A bilateral instrument cannot by itself remove those rights; the change would likely require a formal amendment under Article 34.3 (USMCA, 2018, Article 34.3).

The investment chapter illustrates the difference between built-in and imposed bilateralism. Investor-state arbitration under Annexes 14-D and 14-E applies only between the United States and Mexico and not to Canada. All three parties accepted that limit in the text (USMCA, 2018, Article 14.2(4); Maza Moreno & Roekaert, 2026). A later bilateral arrangement cannot impose a comparable limit on the third party's rights.

Finally, domestic procedure is distinct from the international rules. Where an arrangement requires amendments to existing United States legislation, Congress must pass implementing legislation. Whether Congress has a role where no such amendments are needed remains open (Kitamura & Trachtenberg, 2026). The legal consequences therefore depend on what an arrangement does and how it is made, not on whether it is called bilateral. The rights of the third party and, where legislation is required, the role of Congress are two constraints that the executive cannot bypass.

5. Conclusion: reshaping without replacing?

The answer to the article's research question is a qualified yes. The United States can pursue substantial change without withdrawing: the annual reviews maintain negotiating pressure, and bilateral instruments remain possible within limits that the treaty itself sets. The agreement still binds all three countries.

Three constraints follow. An arrangement that reallocates the remaining party's rights risks breaching the agreement unless that party consents through the agreement's own procedures, most plausibly an amendment. Arrangements that require amendments to existing domestic law need implementing legislation from Congress. The label "bilateral" settles nothing, since what matters is what an arrangement does and to whom. Negotiating pressure is therefore not the same as legal authority: Washington can

bargain bilaterally, but these negotiations cannot by themselves rewrite commitments owed to all three parties.

This conclusion has limits: it rests on publicly available treaty provisions, government statements and early commentary, and it does not predict the responses of Canada or Mexico. Future research could test any concluded bilateral deal against these conditions and examine whether Article 41 reflects customary international law.

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