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Tariffs & Trade Turmoil: Plans for 2026 & Beyond

FEI Eastern Wisconsin Chapter Meeting

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Jeff Van Winkle is a Shareholder in von Briesen's Business Practice Group. Jeff has more than three decades of experience representing businesses, investors and entrepreneurs at all phases of their businesses. He has extensive experience in mergers and acquisitions, international transactions, financing and securities. Jeff provides general counsel services, securities law compliance counseling, and legal guidance for multinational business activities and transactions.

Jeff is a member of several professional associations including serving on the Board of Advisors for the Small Business Advocacy Council and International Trade Association of Greater Chicago. He previously served as chair of the Business Law Section for the State Bar of Michigan and chair of the National Small Business Association.

An avid hiker, Jeff's community involvement includes serving on the Board of Directors of the North Country Trail Association, the longest trail in the National Trails Systems stretching 4,800 miles across eight states.

Facts about Tariffs – some useful, some not

Prior to 2025, the average tariff rate for entry of goods into the U.S. was 2.5%

Globally, the average tariff rate was 3%

This rate may not fully factor into trade the impact of governmental support of manufacturing in each exporting country

Before 2025, the highest tariffs in the 1900s dated back to 1930 under the Smoot-Hawley Tariff Act with rates of 19%

Widely regarded as a factor that deepened the U.S. Depression

Since then, globally and the U.S. have mostly completed a long run of moving towards freer market trading with very low tariffs

How Are Tariffs Established

- Congress imposes import tariff targets and establishes rates
- Congress has authorized the President to establish tariffs in response to documented harm to U.S. industries created by foreign governments
- Tariffs can be used to: raise revenue as taxes or regulate international commerce

Trump Tariff Policy

- Generate revenue by forcing foreign businesses to pay to be able to import goods
- Protect U.S. businesses and selected industries
  - Example: Dairy industry in Wisconsin
- This policy requires extreme flexibility without a long investigative process
  - During first Trump administration, Dept of Commerce accelerated timing for Section 232 and Section 301 and other regulatory processes

Implementing Trump Tariff Policy

- Investigating industries, conducting hearings, publishing in the Federal Register is too slow
- New Method: Executive Order for tariffs
  - Among the more than **200** EOs since Inauguration Day, more than 30 focused on tariffs
  - Permits immediate reaction, quick adjustment, and doesn’t require factual basis for documented harm
- Dubbed “reciprocal tariffs” by Trump Administration

What are Reciprocal Tariffs anyway?

- Reciprocal to existing tariffs or foreign government support to protect their domestic products
  - Trump introduced the new tariffs with a big board disclosing a long list of the foreign tariffs or support as determined by the administration
  - Broad strokes used to determine tariff rates
- Analysts have reported that the reciprocal tariff rates seem to be tied to trade deficit volume, but without factoring in value or value to the U.S. economy

Roadblocks to Trump Tariffs

- Federal Circuit Court of Appeals decision on August 30 ruled most IEEPA-based tariffs illegal
  - Implementation is deferred until Oct. 14, 2025 to permit appeal to U.S. Supreme Court
  - Legal analysis of the ruling is divided, with solid arguments for both affirming or reversing the Court of Appeals decision
  - Likely, politics at SCOTUS will strongly influence the outcome

Roadblocks to Trump Tariffs (continued)

- Invalidating the new Trump tariffs could require a refund of more than $170B, based upon independent sources, although the Treasury Secretary stated more than $650B would be refunded
  - Importers of record must keep all details to obtain refunds
- Completing additional trade agreements could lead to lower tariff rates than currently listed
- Responses to reciprocal tariffs have also compelled the Trump administration to adjust proposed tariff rates

Current State of Play

- No more *de minimus* tariff exclusion for packages valued under $800
- The July 4 Congressional Budget counts on $2.8 trillion of new revenue over 10 years to support the projected budget deficits
  - CBO reports skepticism on the potential revenue because of the newness and size of the projected tariff revenue
- USMCA rate exceptions for goods covered by USMCA
  - Key exclusion for auto supply industry
- As of early August, country-based rates will generally apply, with selected product and sector exceptions
  - This strategy ties back to the initial EO announced in early April, 2025

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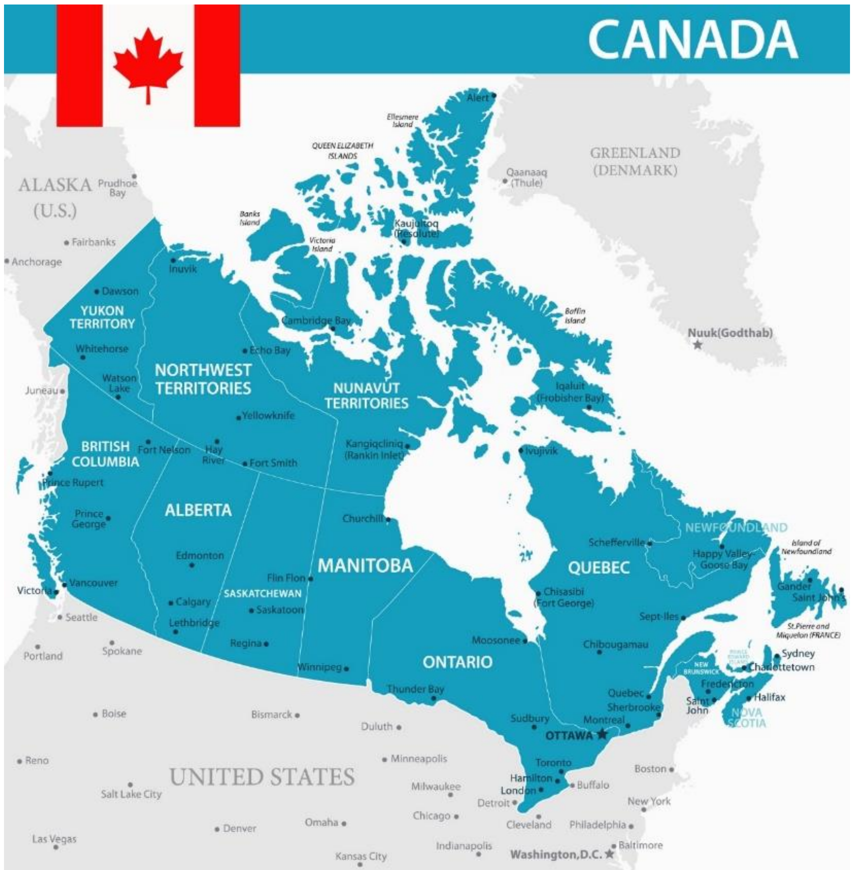
Country of Origin; Transshipment

- Origin can be changed by substantial transformation
- Legal transshipment means transporting goods through a third country, often under customs control, and then on to a final destination
- Illegal transshipment typically involves diversion through a third country intending to change country of origin without substantial transformation

A Few Key Countries

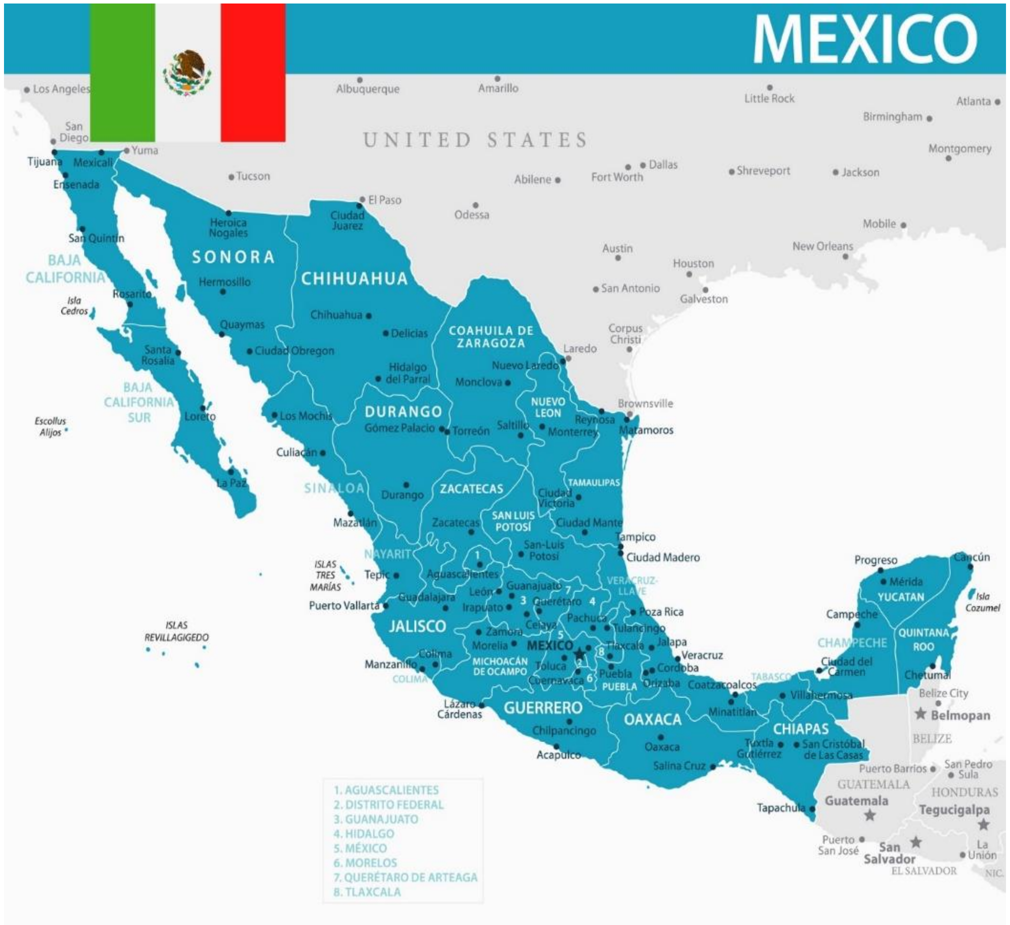
- Canada
- Mexico
- Germany
- Vietnam

CANADA

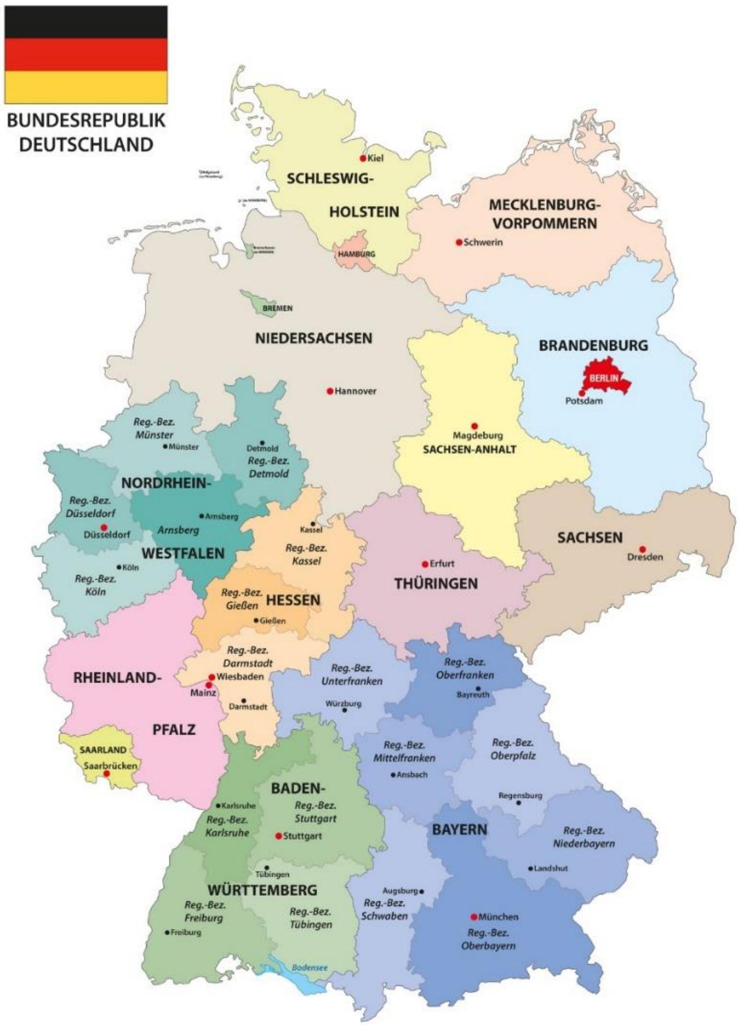


- Auto Industry benefits from USMCA
- Trump Administration seeking to open negotiations on changes to USMCA ahead of scheduled date
- Canadian response to U.S. tariffs has been targeted

MEXICO

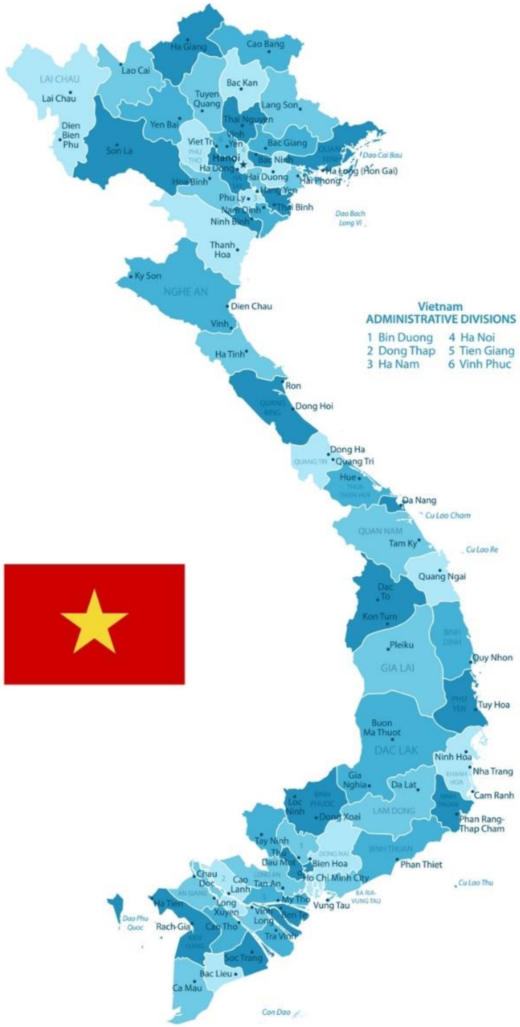


- USMCA applies
- Greatly benefitted from Trump 1.0 China tariffs
- Manufacturing and agriculture sectors greatly impacted



GERMANY

- Rates on imported automobiles volatile issue
- More important to WI are imports necessary to support U.S. manufacturing
- German businesses continue to evaluate establishing U.S. presence



VIETNAM

- Epicenter of transshipment issues
- Massive growth of manufacturing after Trump 1.0 China tariffs caused relocation of supply chain
- Growing importance in WI business production

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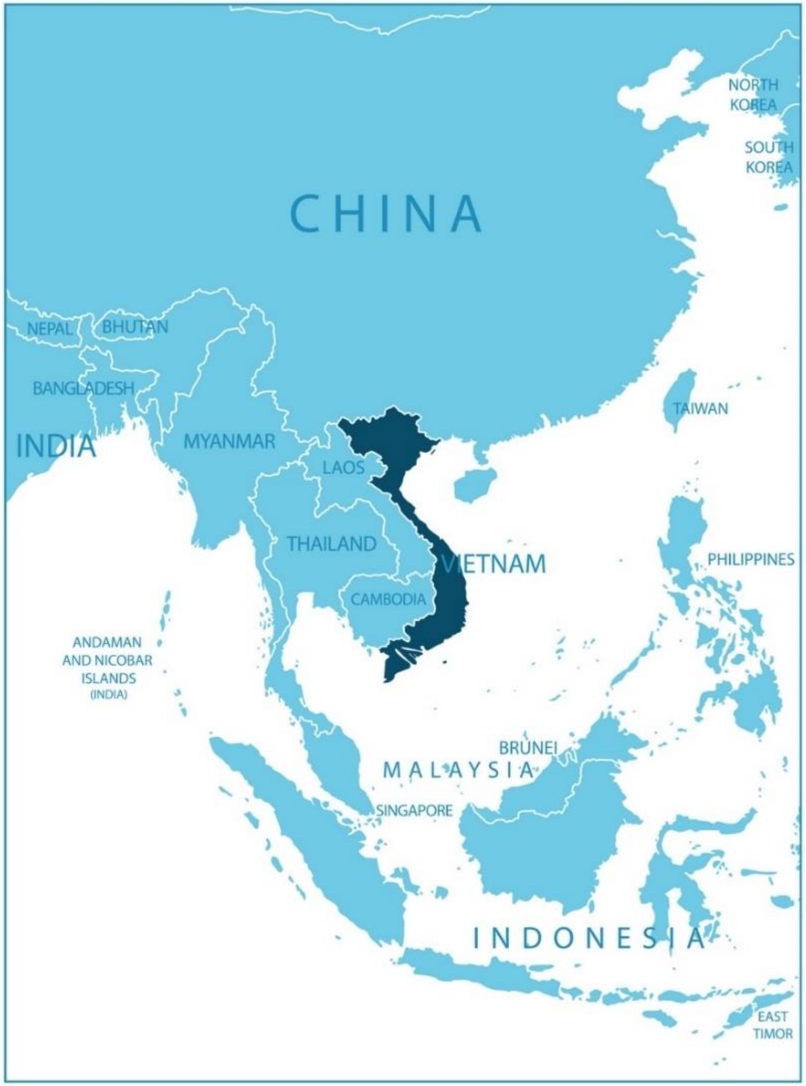

CHINA

- No clear implementation of policy or strategy
- National defense issues remain prominent in U.S. actions
- Skilled workforce ready to work has caused China businesses to make new pricing deals

Now For A Few Technical Details

When are tariffs imposed and collected

What value applies to determine tariff amount

First Sale doctrine

More Technical Details

- What is the import rate?
- How diligently can costs be unbundled to lower import value?
- Who is managing the import process at the business?

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Responses to Tariffs

Switch to U.S.-manufactured goods

Require DDP shipping terms / Or in other ways, require the seller to accommodate the increased tariff rate

Similar to Trump 1.0 tariffs, modify foreign supply chain

Invoke “First Sale” doctrine, when available

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Defective Responses to Tariffs

Improperly exclude components to cost of goods

Modify supply chain route without materially altering manufacturing process

Improperly classify goods – this was much more common under Trump 1.0 tariffs

What to Remember

1. For the foreseeable future, tariff rates will be uncertain, used as national policy tools

2. A few product sectors have obtained more moderate tariffs – trade association negotiation remains an important factor

3. Businesses should continue to try to renegotiate supply agreements to get sellers to bear some of the tariff burden

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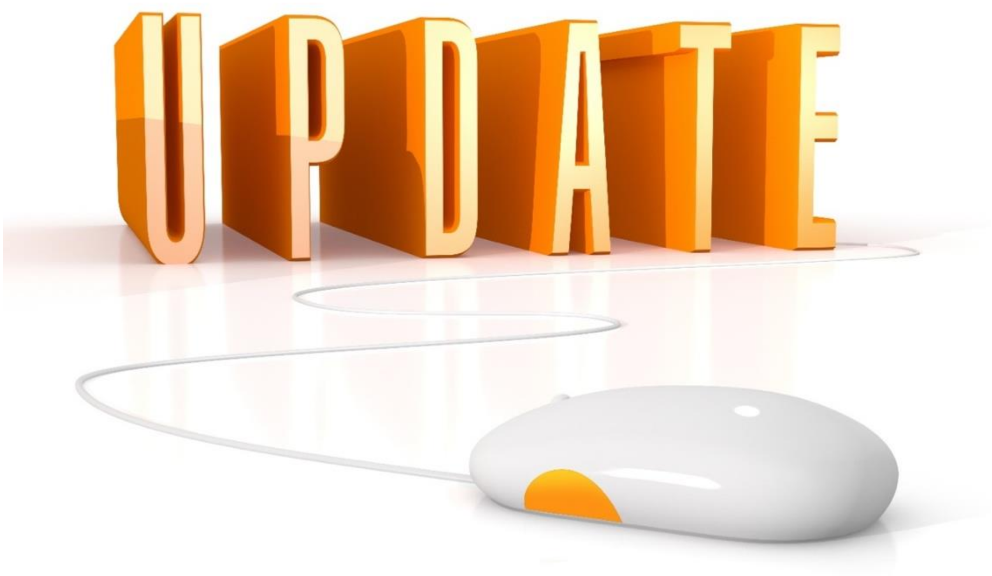

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