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# **Defensive Driving: Trade Policy & Transportation Fuels**

AB 1007 Joint Workshop on the Alternative Transportation Fuels Plan  
May 31, 2007



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Georgetown University Law Center  
Harrison Institute for Public Law



# Roadmap

## **1. Introduction**

- a. Who we are
- b. Our theme
- c. Trade rules & transportation fuels
- d. How people use trade rules

## **2. Foreseeable collisions**

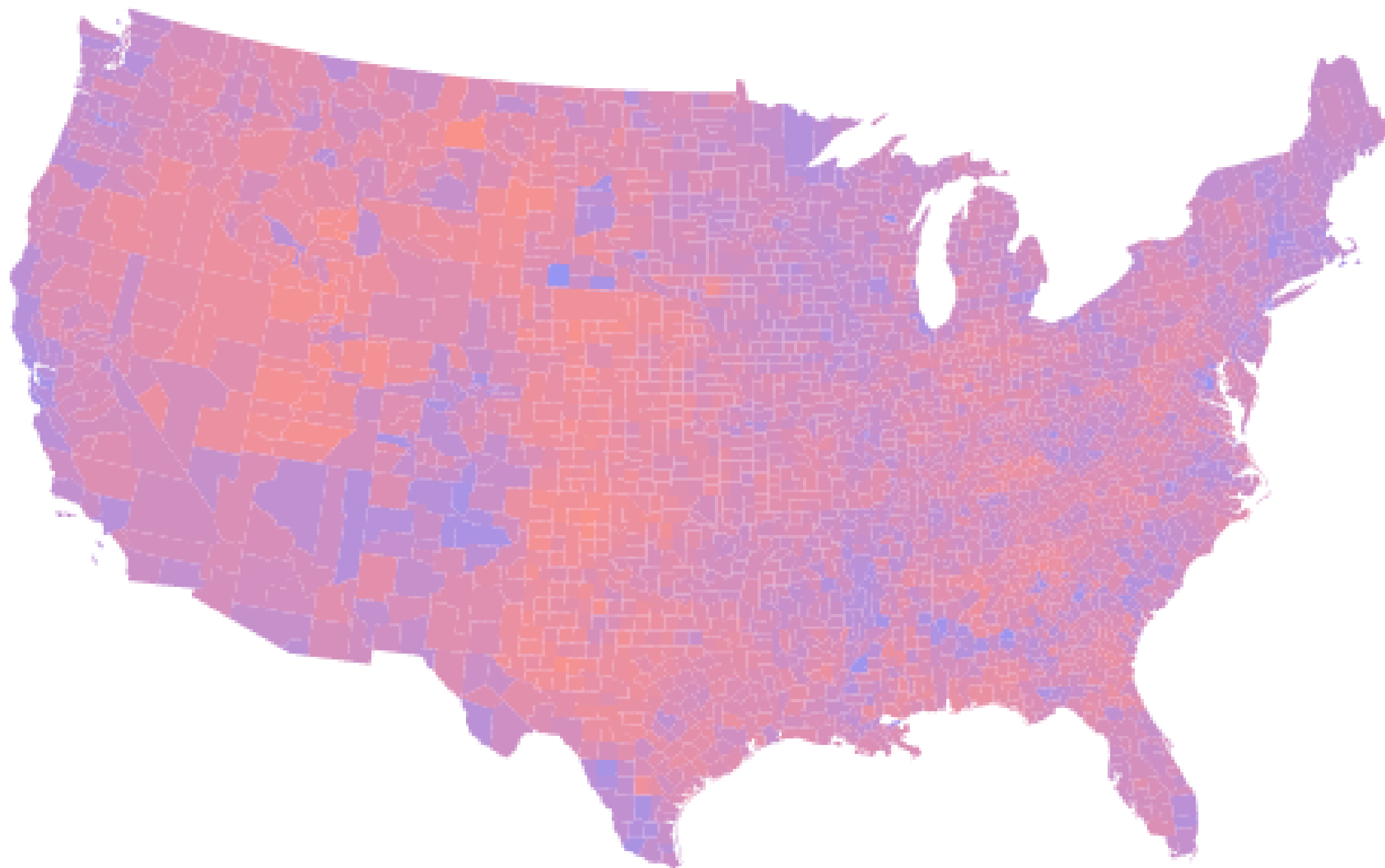
- a. R&D subsidies
- b. Ethanol production
- c. Taxing and regulating fuel

## **3. Conclusion**

- a. Defensive driving - anticipate
- b. Roadmap for drafting
- c. Multi-state collaboration

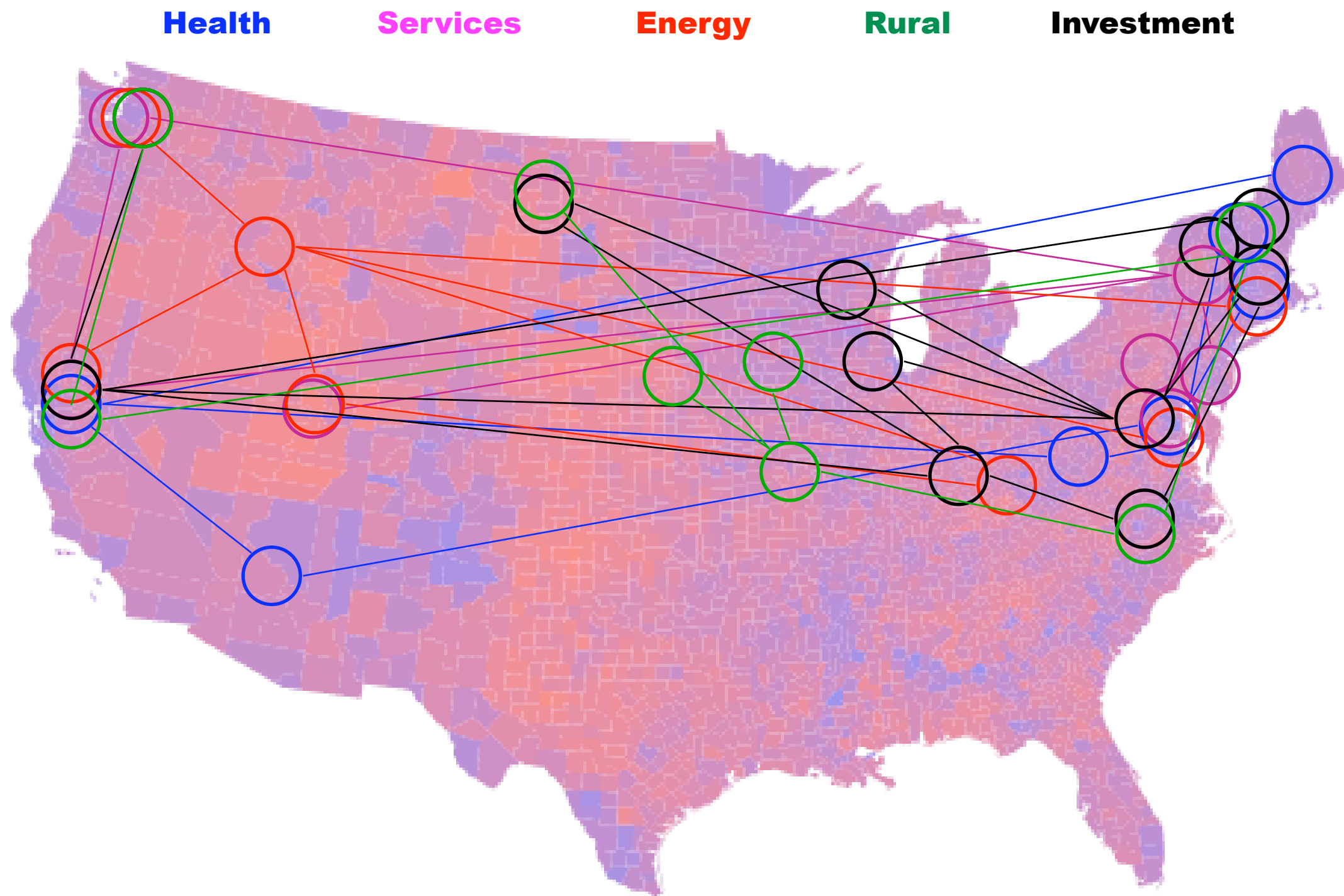


## Intro - Who we are, state networks



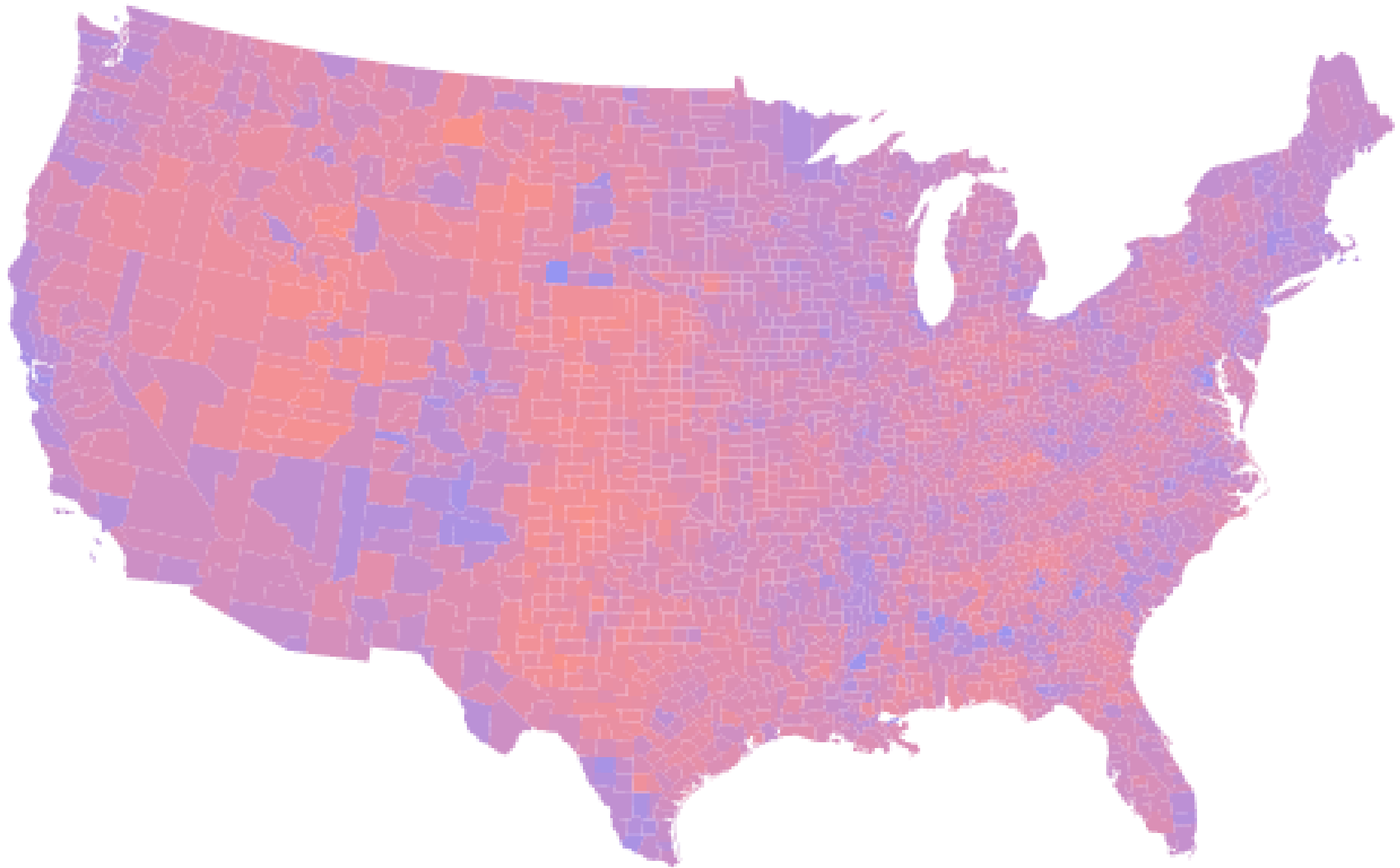


# Intro - Who we are, state networks





## Intro - Who we are - Past work in California





# Intro - Who we are - Past work in California





# Intro - Our defensive driving theme



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# Intro - Our defensive driving theme





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## Intro - Our defensive driving theme



### **Your mission**

- Sustainable fuel economy
- Be a national model
- Shift global markets



# Intro - Our defensive driving theme



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## Trade policy

- Regulates governments, not just trade
- Applies to domestic regulation, taxes, subsidies
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- Draft your policies to avoid collisions
- Collaborate with other states on future negotiations



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# Intro - Trade rules & fuels





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## U.S. Trade Agreements in Force

**WTO** - 149 nations

20 agreements

Trade disputes - yes

Investor disputes - no

Ongoing negotiations - yes





# Intro - Trade rules & fuels



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<b>WTO</b> - 149 nations	<b>FTAs</b> - 10 + 4 pending
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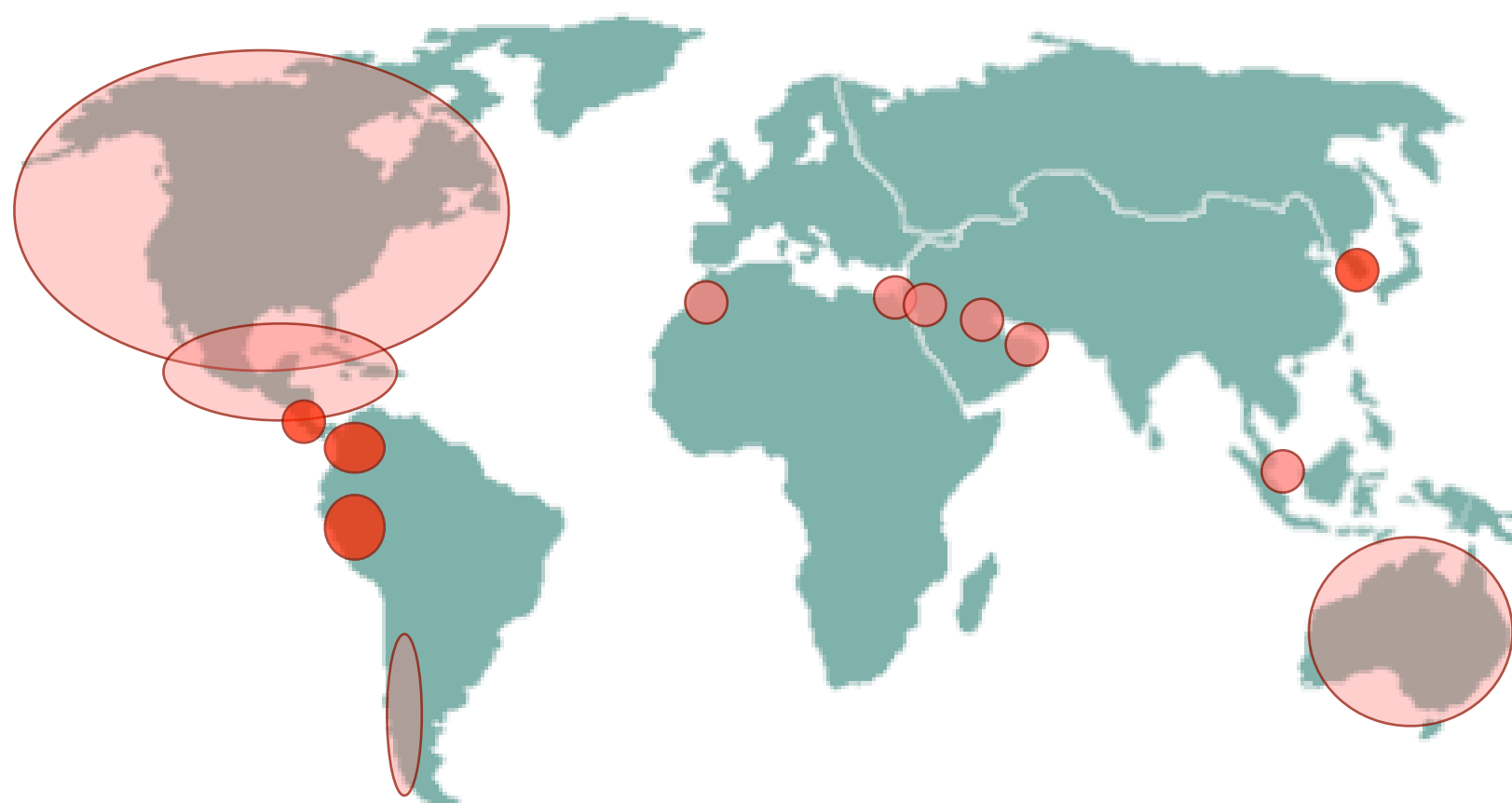


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# Intro - Trade rules & fuels



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**Selected Policy Options**

**Trade Agreements**



# Intro - Trade rules & fuels

Selected Policy Options	Trade Agreements				
	Subsidies	Goods	Services	Procurem't	Investment



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Limits on non-discriminatory taxes and regulations
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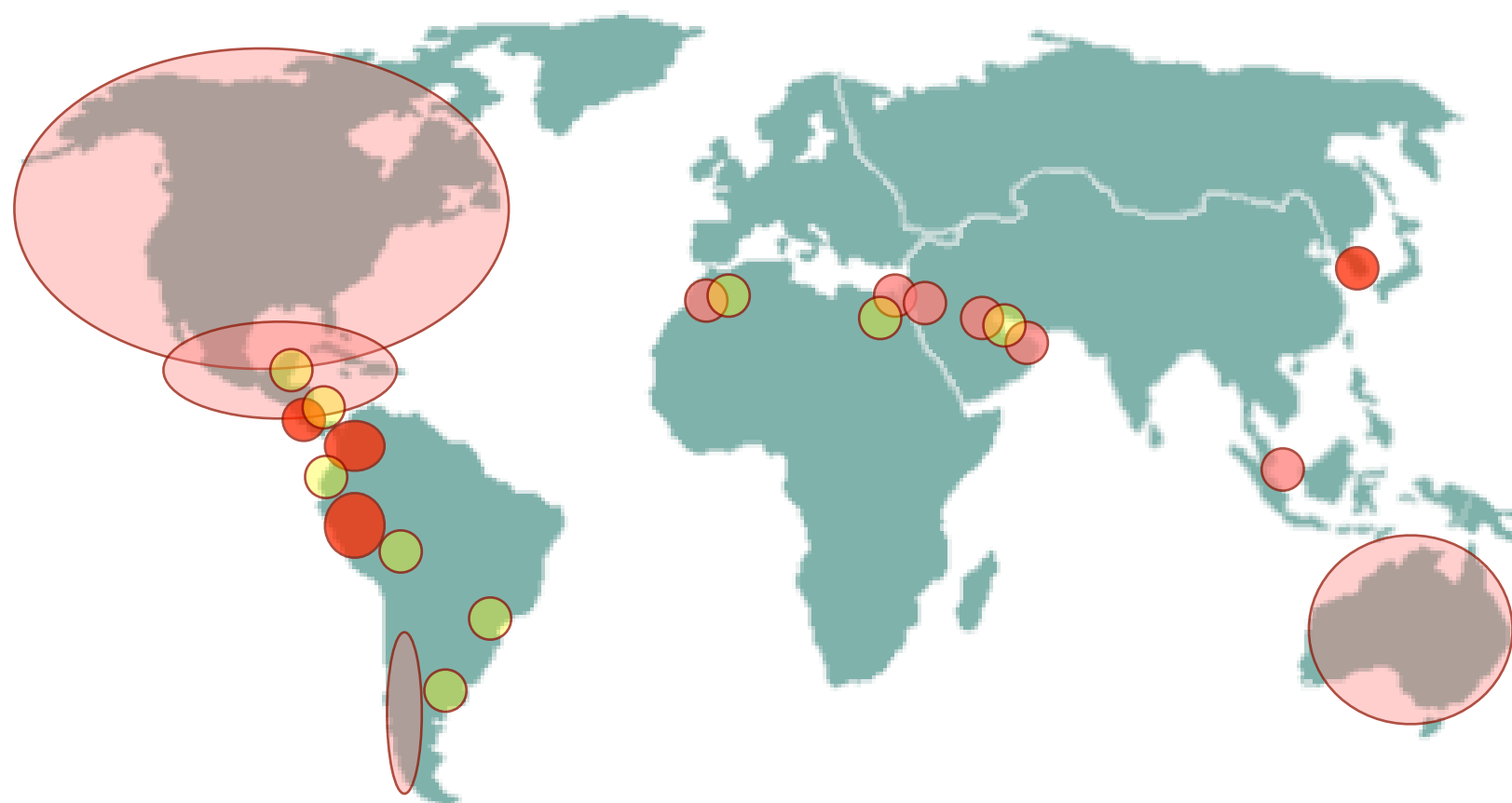
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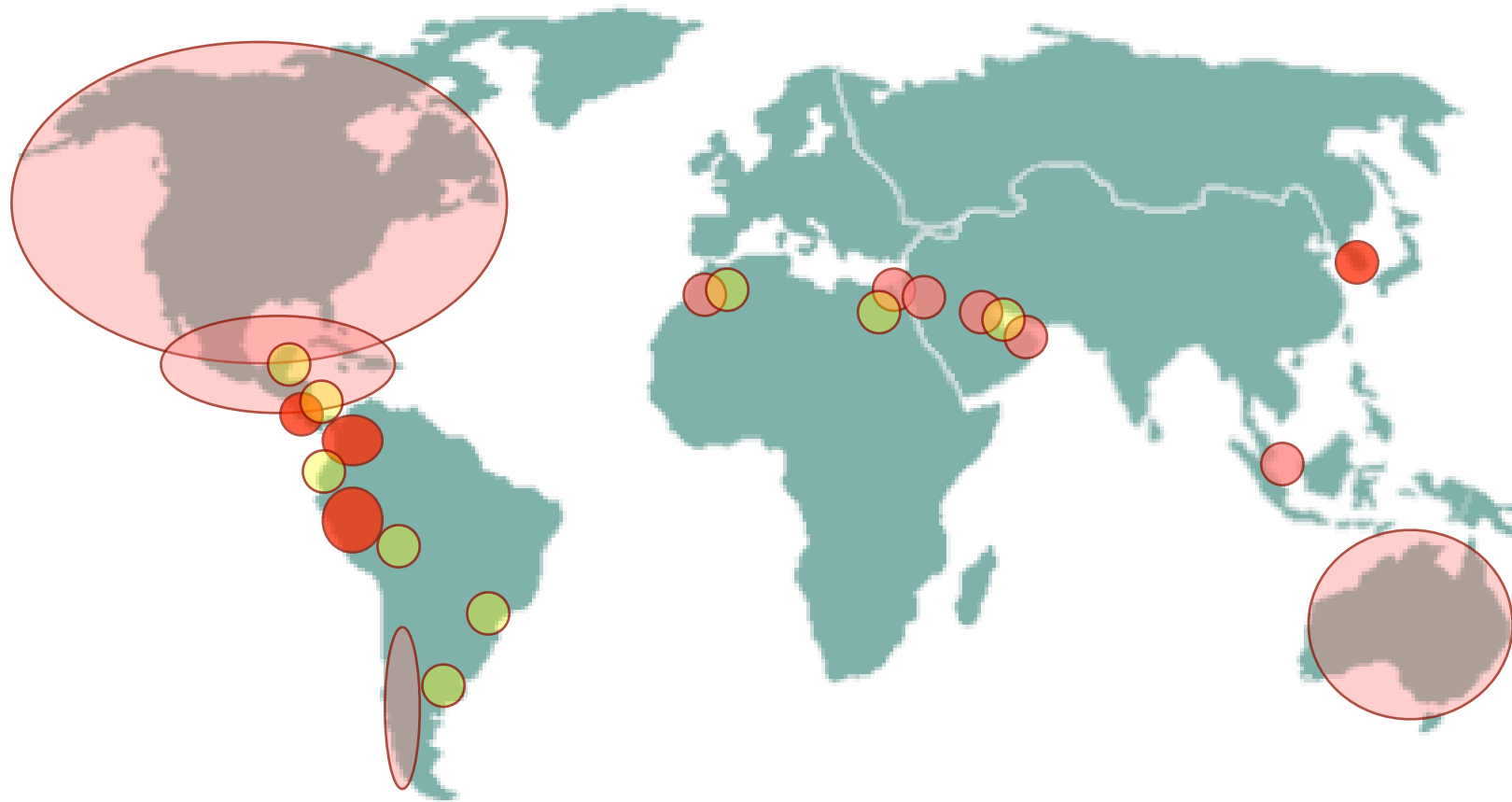


# Intro - Who might use trade rules?

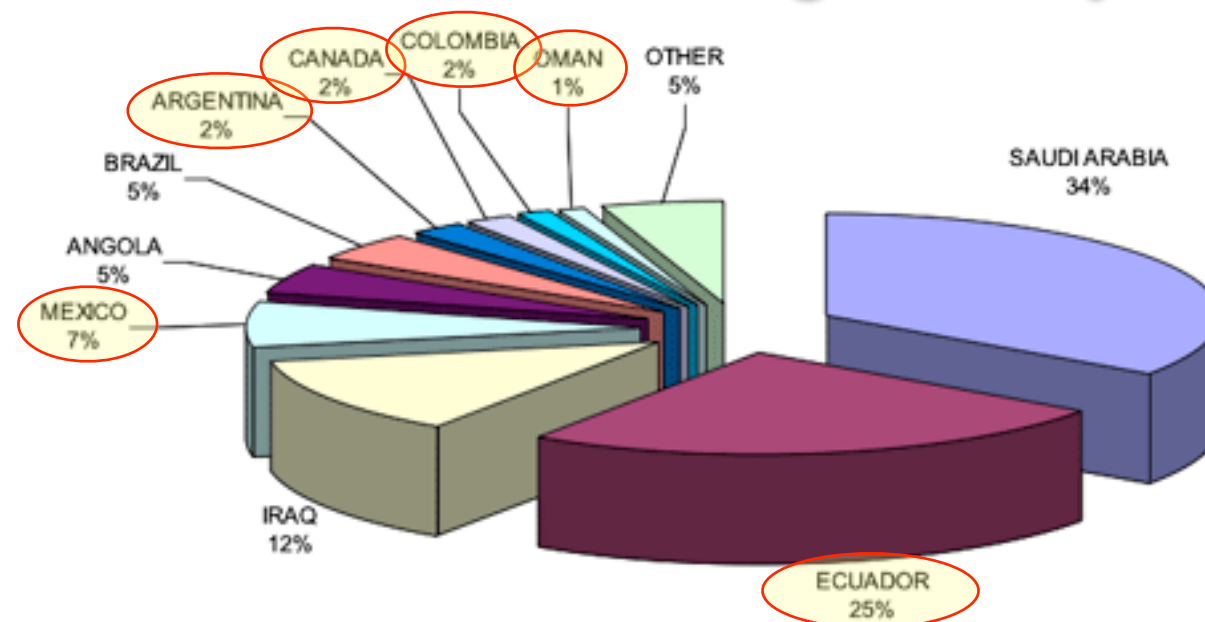




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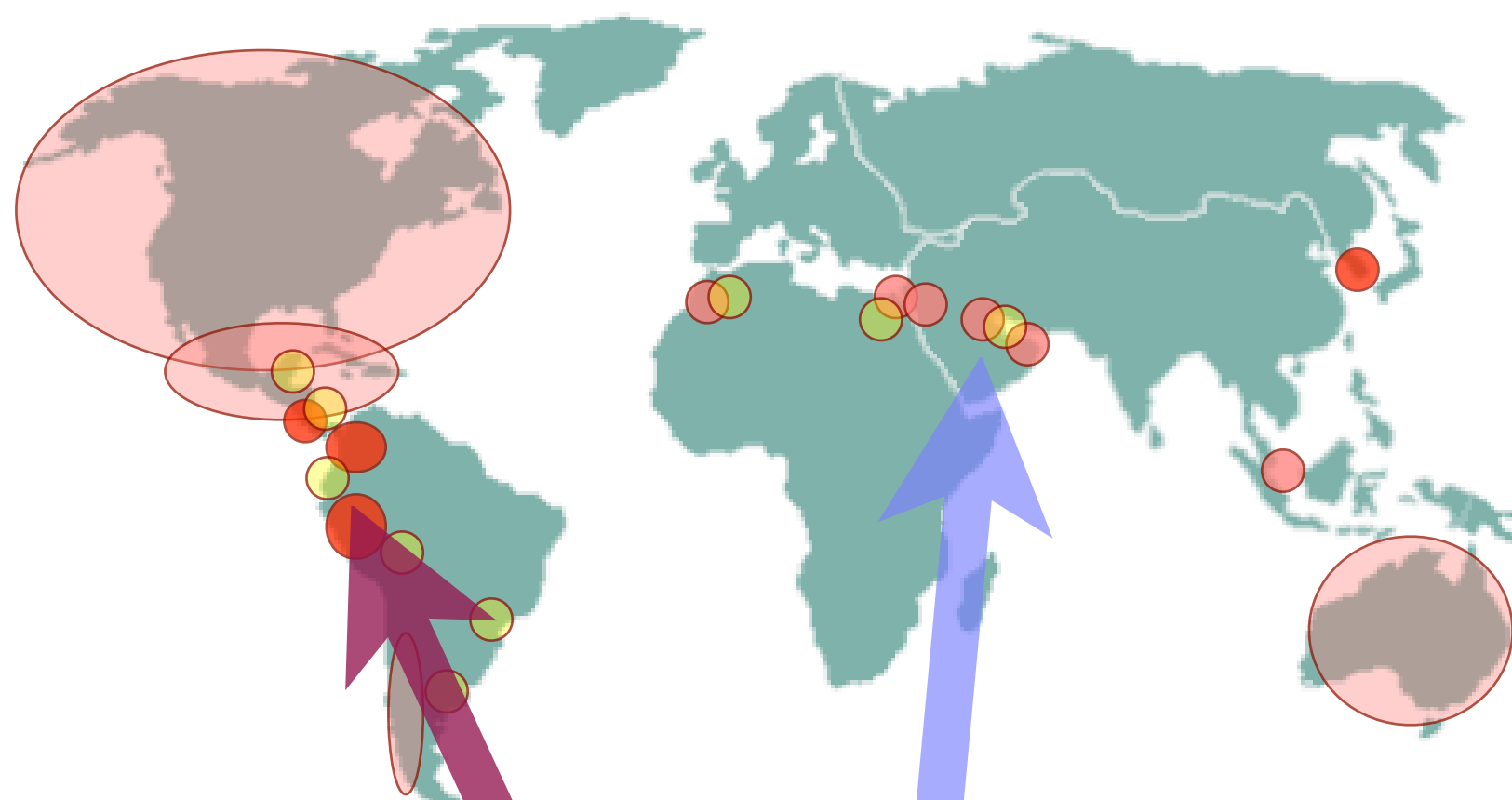


## California's Foreign Oil Imports

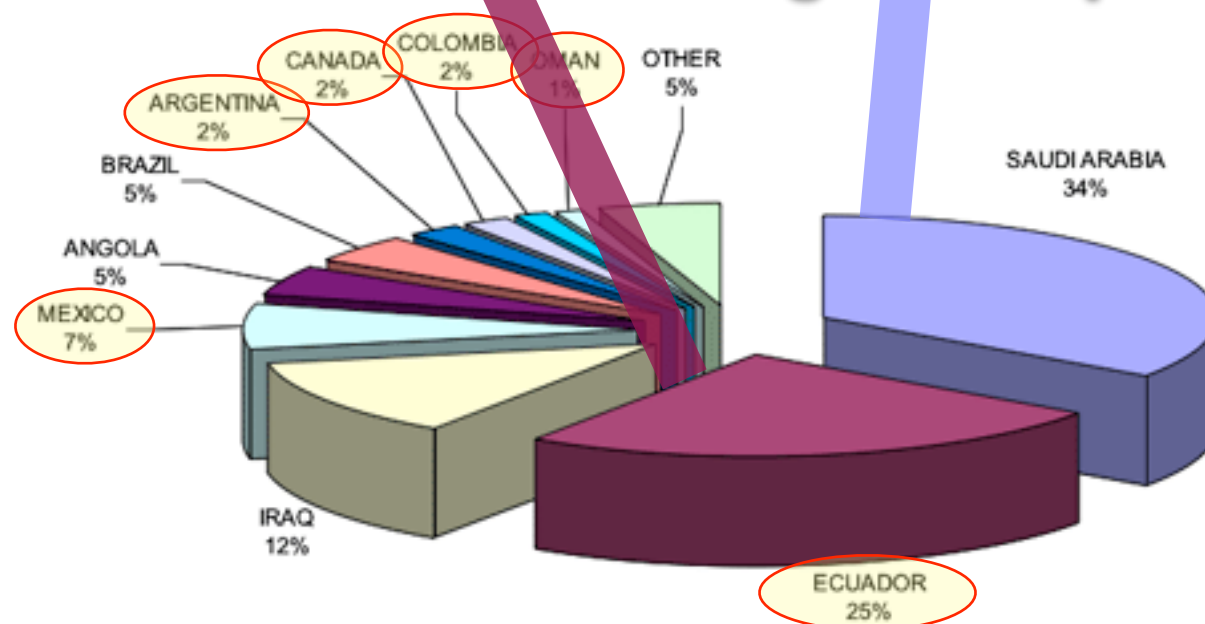




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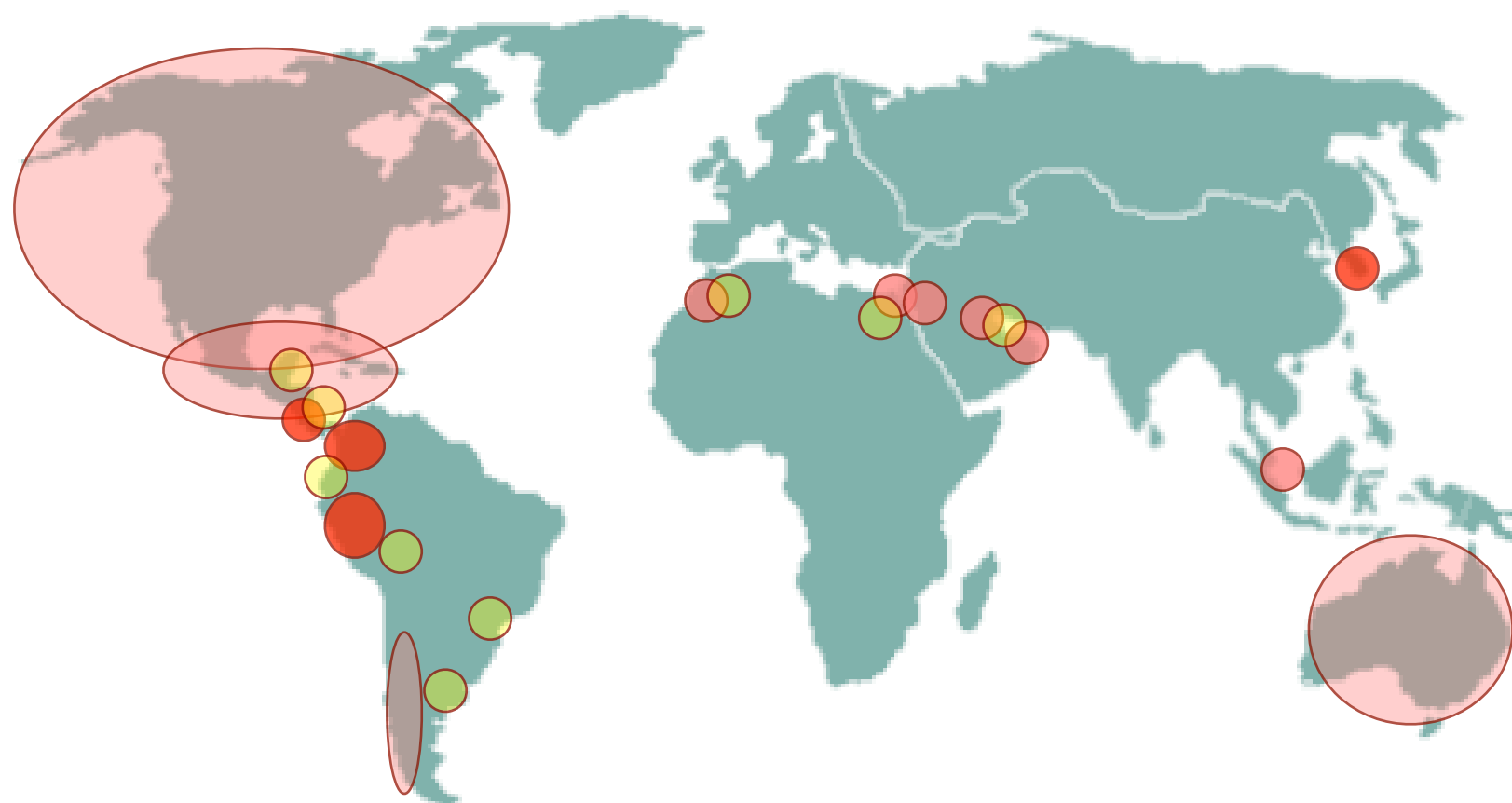


### California's Foreign Oil Imports





## Intro - Who might use trade rules?



### Top Ethanol Producers - 2006

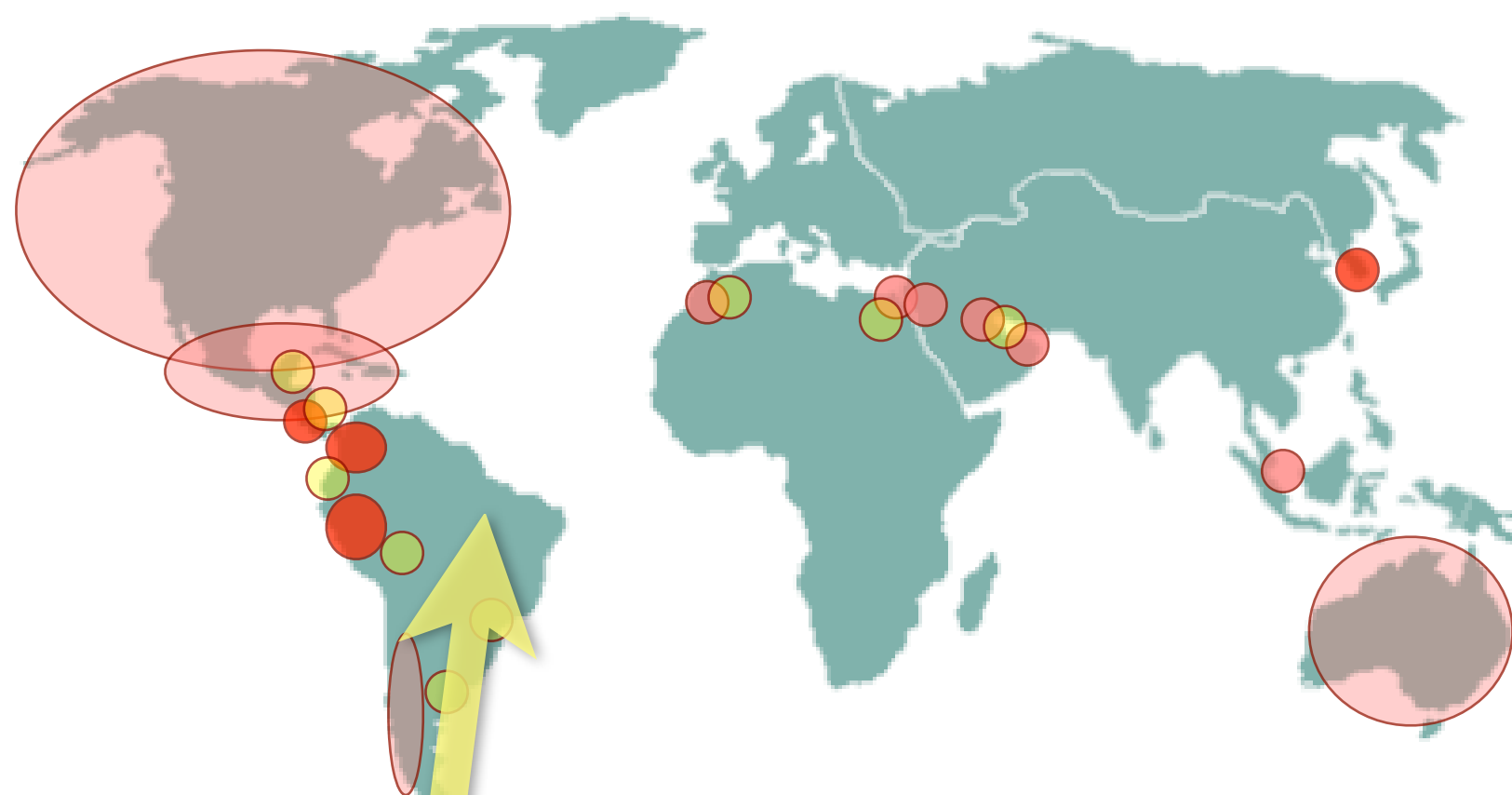
Millions of Gallons, Source: F.O. Licht, RFA

Brazil	4,891	Russia	171
United States	4,855	South Africa	102
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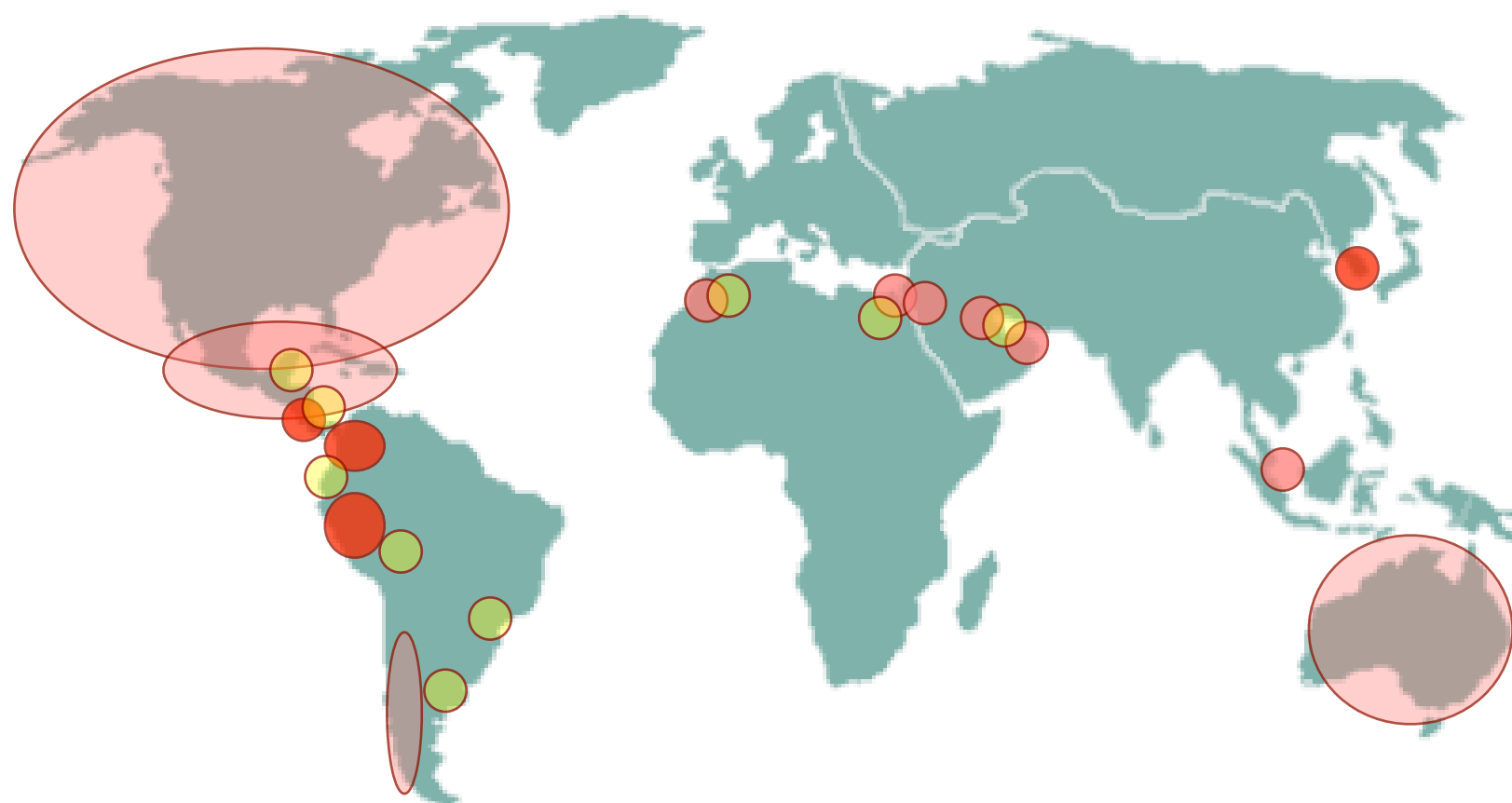
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# Intro - Who might use trade rules?



## Top Fuel Service Suppliers

Biofuels	Oil & Gas
ADM	Halliburton
Cargill	?
?	?
?	?



## Intro - How people use trade rules

Trade rules that limit government authority



State laws that affect trade



## Intro - How people use trade rules

### Trade rules that limit government authority

#### Legal use of trade rules (rare)

- Threat of trade sanctions
- Investor compensation
- Domestic enforcement / preemption

#### Political use of trade rules

- Lobbying by federal officials
- Lobbying by foreign governments
- Lobbying by private firms

State laws that affect trade



## Potential collisions - R & D subsidies





## Potential collisions - R & D subsidies



### Trade rules

- No export subsidies
- No “serious prejudice” to competitors
- Limits on agricultural subsidies

### Trade disputes

- Cross-subsidies in Boeing/Airbus dispute

### Driving defensively

- Low risk of conflict unless proprietary advantage
- Anticipate negotiations on R&D subsidies (GATS)



# Potential collisions - Ethanol production







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## Trade rules

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## Trade disputes

- Brazil cotton case (Brazil won)
- Canada corn case (pending)
  - US corn subsidies
  - Ethanol subsidies not challenged (yet)

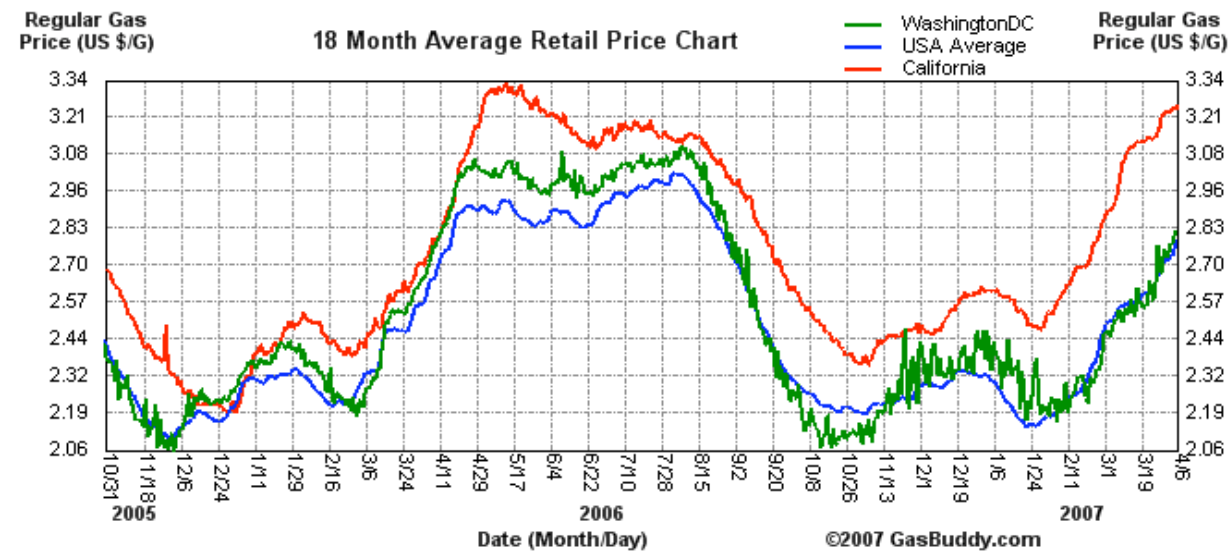
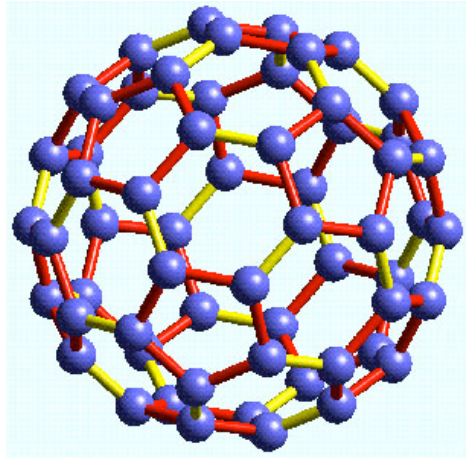
## Driving defensively

- Anticipate impact on imports
  - Ethanol exporting countries
  - Petroleum exporting countries



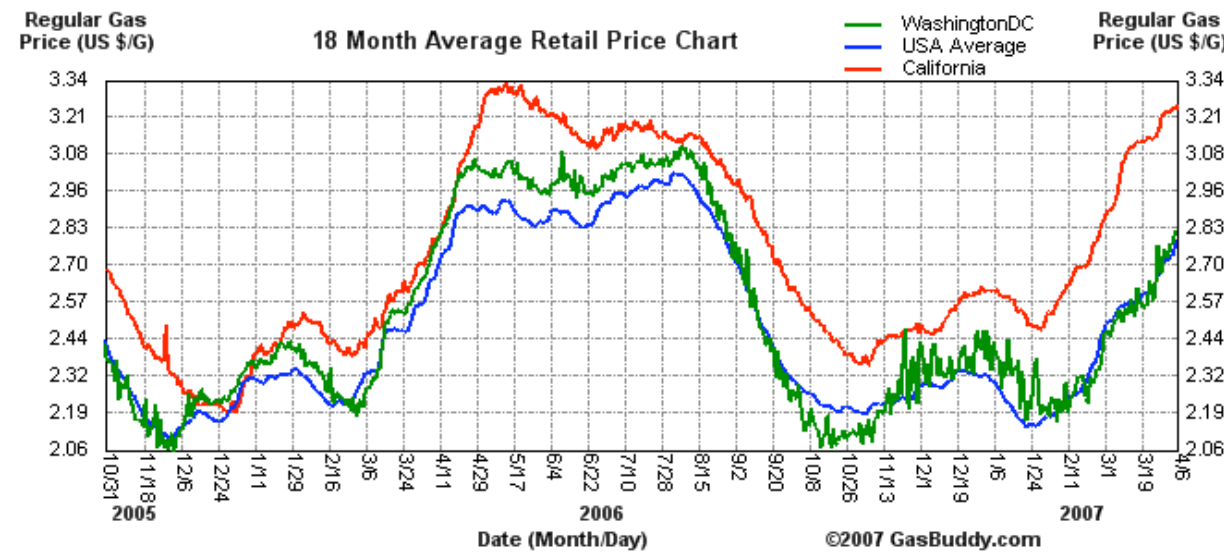
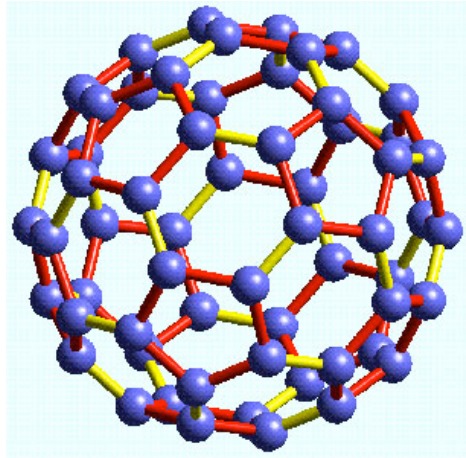


# Potential collisions - Taxing & regulating fuels





# Potential collisions - Taxing & regulating fuels



## Trade rules - discrimination

- Don't favor domestic content
- Don't favor domestic suppliers

## Trade disputes

- Venezuela gas (Venezuela won)

## Driving defensively

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## Potential collisions - Taxing & regulating fuel



## Potential collisions - Taxing & regulating fuel

### Trade rules - domestic regulation

- Laws must “relate to” a service trade (proposed), e.g. –
  - Wholesale distribution of fuels
  - Pipeline transportation of fuels
  - Bulk storage of fuels
- Laws must be “based on” (future) international standards

### Trade disputes

- Peru vs. EU on sardines (Peru won)

### Driving defensively

- Anticipate interpretation of “relate to” test
- Anticipate development of international standards
- Anticipate conflicts in standard-setting process or competition among standards



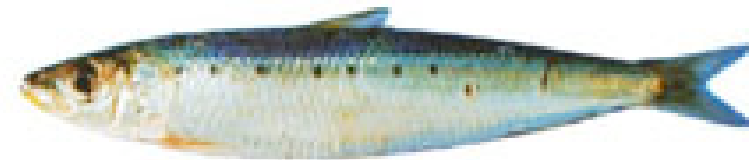
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- Anticipate your response
  - Stay the course (have an answer)
  - Change direction





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## 1. Defensive driving

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- Procedural safeguards
- Existence of international standards
- Cumulative impact of policies





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## 3. Multi-state collaboration

- Federal tariffs, R&D programs
- GATS disciplines on domestic regulation
- GATS energy commitments
- Standard setting by international bodies



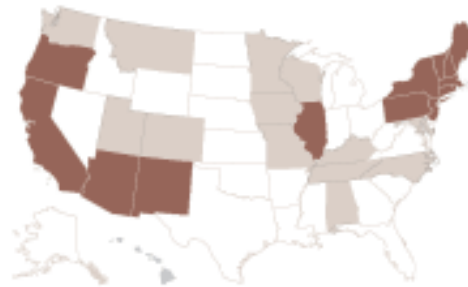
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## State Initiatives

### Setting goals for emissions

- Adopted plans that outline steps to reduce the state's contributions to climate change ...
- ... and set a statewide goal to reduce greenhouse gas emissions



### Vehicle emissions

- Laws limit carbon dioxide emissions from vehicle tailpipes
- Laws pending or under consideration



### Renewable fuel for vehicles

- Requires that gasoline sold in the state contain a certain share of ethanol
- Offers tax incentives and/or grants for ethanol production and use



### Power plant emissions

- Regulations in place to cap or offset emissions
- Participating in a multi-state accord, taking effect in 2009, to reduce carbon dioxide emissions
- Mass. and N.H. fall into both categories.



### Renewable sources of electricity

- Mandates that electric utilities generate a specified amount of the state's electricity from renewable sources



NOTE: Data as of February.

Source: Pew Center on Global Climate Change

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## Contact information

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