R&D consortia often have diffuse goals due to the pre-competitive nature of their research and, unlike most joint ventures, include direct competitors. The growing integration of government and university laboratories with private sector research in the form of technology consortia has had a profound effect on the nature of subsidized collaboration.[35]

For its part, countervailing duty law establishes that generally available subsidies are not "actionable", including for research purposes. In addition, the U.S. Department of Commerce practice has been to countervail an R&D subsidy if it is specific unless the results are made generally available.[36] Moreover, the threat that large economies will use countervailing duties against imports, like the use of investment subsidies in those same economies, can influence corporate decisions in favour of investing in larger countries to the detriment of smaller jurisdictions.

The Uruguay Round developed internationally agreed-upon rules for defining and categorizing subsidies.[37] Government subsidies are "actionable" or "non-actionable" depending on the nature, objective and amount of the subsidy. Some other subsidies are simply "prohibited" notwithstanding the amount of subsidy (e.g., export subsidies for non-agricultural goods). As noted above, certain R&D subsidies are not actionable.[38] Prohibited and actionable subsidies may be subject alternatively to WTO dispute settlement procedures or countervailing duties applied by the importing country in accordance with Part V of the SCM Agreement, with the caveat that only one form of relief (countervail or WTO dispute settlement) shall be available to the

35 Due to their potentially collusive behaviour, technology consortia are sometimes considered anti-competitive.

36 Countervailing duties are trade measures that may be applied at the border where subsidized imported goods are found by the domestic investigating authority to distort the market (i.e., cause material injury or threat of material injury to a domestic industry, or material retardation to the establishment of such an industry). For an investigation to proceed, the domestic authority must demonstrate: a) the existence of a subsidy, b) injury, and c) a causal link between the subsidized imports and injury.

37 For overviews of the SCM Agreement, see: Patrick J. McDonough, *Subsidies and Countervailing Measures*, in Terence Stewart (ed.), The GATT Uruguay Round: A Negotiating History (1986-92), Volume 1, Kluwer Law and Taxation Publishers, Cambridge Massachusetts (1993); Gilbert Gagné, *North American Free Trade, Subsidies and Countervailing Duties: Issues and Options*, Policy Staff Paper No. 94/13, Department of Foreign Affairs and International Trade (July 1994); George Kleinfield and David Kaye, *Red Light, Green Light? The 1994 Agreement on Subsidies and Countervailing Measures, Research and Development Assistance, and U.S. Policy*, Journal of World Trade(November 1994).

38 Governments are prohibited from granting subsidies contingent either on export performance or the use of domestic products (SCM Agreement Article 3.1). Governments must use caution to avoid "actionable" subsidies, i.e. ,those causing "adverse effects to the interests of other members" of the WTO (SCM Agreement Article 5.1). Governments may provide non-actionable subsidies, i.e., those which are generally available or not specific within the meaning of the Agreement (including regional development assistance that is generally available within designated disadvantaged regions), or those which are specific but which meet certain prescribed criteria (for R&D and environmental reconversion).