

# International intellectual property Law on biotechnology and its relationship with biodiversity

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Biotechnology is defined in the Rio Convention on Biological Diversity (CBD, 1992) as any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use. It involves the development by scientists of biological resources directly extracted from their natural environment or stored for research purposes.

International law protects inventions by the classical system of patents. Article 27 of the Agreement on Aspects of Intellectual Property Rights (TRIPS, 1994) provides that an invention can be protected only if it is new, involves an inventive step (non obvious) and is capable of industrial application (useful). TRIPS is part of the Agreement establishing the World Trade Organization (WTO).

Any WTO Member State may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment. It is also possible to exclude from patentability, animals, plants and essentially biological processes for the production of plants or animals. Inventions based on microorganisms remains patentable and depend on a specific regime of deposit for States parties to the Budapest Treaty (1977-1980).

The Doha Declaration (2001) opens a new path for biodiversity protection since raises the question of the relationship between TRIPS and CBD. In this context, The TRIPS Council coordinates discussions between Member States on the disclosure of the country of origin of biological resources or traditional knowledge used to create a biotechnological invention.