**Scope of the project:**

Fiona Smith is currently working on a project that explores the legality of India’s Public Stockholding Programme under the World Trade Organisation’s (WTO)’s rules on subsidies in the context of a discussion of how food is, or should be regulated to meet India’s food security commitments to its citizens. The project is part of a book on ‘Food in International Economic Law.’ The book explores what happens when food is regulated by international economic institutions to which states are the only parties, like the WTO, the International Monetary Fund (IMF) and the World Bank, and when investment in food production by large multinational corporations is controlled through international investment law. It is about what can go wrong when the regulation of food is left to international institutions and international investment law and why those problems can arise; but also about when the regulation of food by international economic institutions and international investment law works- when the right balance is struck between food and the other values at play, why that happened, and the circumstances that have to exist in order for a positive outcome to happen.

**Background:**

Introduced by the Modi government in 2013, India's food stockholding programme was designed to address the chronic malnutrition in urban and rural parts of India by offering up to 5kg of free or heavily subsidised rice and food grains per person per month. The food security scheme is designed to cover two thirds of India’s 1.2 billion people, covering 75% and 50% of India’s rural and urban populations respectively. It is hailed as a major victory in the fight to combat malnutrition in India where approximately one fifth of all India’s children and 36% of women of childbearing age are thought to be chronically malnourished. The combination of welfare programmes and the public stockholding scheme has enabled India to improve domestic malnutrition by 26%, a much faster rate than other South Asian countries, despite India’ government’s ambition.

Despite the seemingly positive impacts of India’s programme, the international response in the World Trade Organization (WTO) has not been overwhelmingly positive. WTO members have identified two interconnected problems: the potential rise in the subsidy given to domestic farmers not tied to improvements in the way those products are produced (i.e. efficiency savings) and that the subsidy is in violation of India’s domestic support commitments under the WTO Agreement on Agriculture.

In a preemptive response to the possible illegality of its public stockholding scheme, India spearheaded a campaign during the multilateral trade talks on the reform of the WTO rules prior to the 2013 Ministerial Meeting at Bali, Indonesia. Heading a coalition of developing countries, India argued for a permanent change in the rules to permit public stockholding programmes at administered price, rather than at market prices as currently permitted, stating that such a change was important and ‘non-negotiable’ in the light of growing concerns of countries’ domestic food needs and potential supply problems caused by the impact of climate change. After intensive negotiations, the WTO members negotiated the Ministerial Decision on Public Stockholding for Food Security Purposes effectively imposing a time-limited moratorium (or ‘peace clause’) on dispute settlement actions on the legitimacy of such schemes in WTO dispute settlement proceedings subject to certain limitations, with a promise that further negotiations on a permanent solution would take place subsequently. Notwithstanding expectations that this would resolve the matter at least temporarily, India declared its unhappiness with the negotiated ‘peace clause’ and informed WTO members that it could not support the adoption of another critical new agreement from Bali, the Trade Facilitation Agreement, until it found permanent movement on the food security issue. The Trade Facilitation Agreement arguably is the most important outcome of the December 2013 Ministerial Meeting, ironically because it is projected to increase income from trade to developing nations, by reducing overall trade costs and thereby increasing global income by over $40billion. The US and India reached a bilateral settlement in November 2014 which extended the limited moratorium on legal action against India’s stockholding programme until such a time when a regulatory solution could renegotiated in the WTO. In return, India agreed to withdraw its objections to the adoption of the Trade Facilitation Agreement.