

LEGAL CHALLENGES FOR IMPLEMENTING AN ETS IN INDIA

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Environmental Legislation

- For implementation of ETS in India, legislation for the same is required.
- The same would be required in the line of Air Act, 1981 and has to be a Central Government Law
- Hence to enact the legislation MoEFCC and CPCB will have to come up with scientifically supported methodology supported by legality equally
- The legislation has to clearly pronounce about Rules and Policy, Regulations and Registry Regulations

Environmental Legislation

- Currently the Environmental Legislation in India is based on concentration based standards wherein the each type of emission is allowed in a particular concentration which is normally in ppm or mg/Nm³
- While the Emission Trading System deals with Load based emissions or in simpler words the emitters are allowed to emit specific quantity of pollutant in a decided particular interval



Environmental Legislation

- Hence, to implement an ETS in India the current Legislations need to be amended so as to specify Load Based standards in the particular air pollution control area
- This would be a herculean task in itself for a country like India where there are a number of industrial units within various sectors using variety of fuels
- Hence to decide the Load Based Standards, national organisations like MoEFCC and CPCB will have to come up with scientifically supported methodology considering the flow and fuel in individual industrial units.

Special ETS Infrastructure

- For implementing an ETS in India, a special regulatory authority would be required
- It would also require special dedicated ETS infrastructure over and above the existing Pollution Control Boards mechanism



Trading Rules

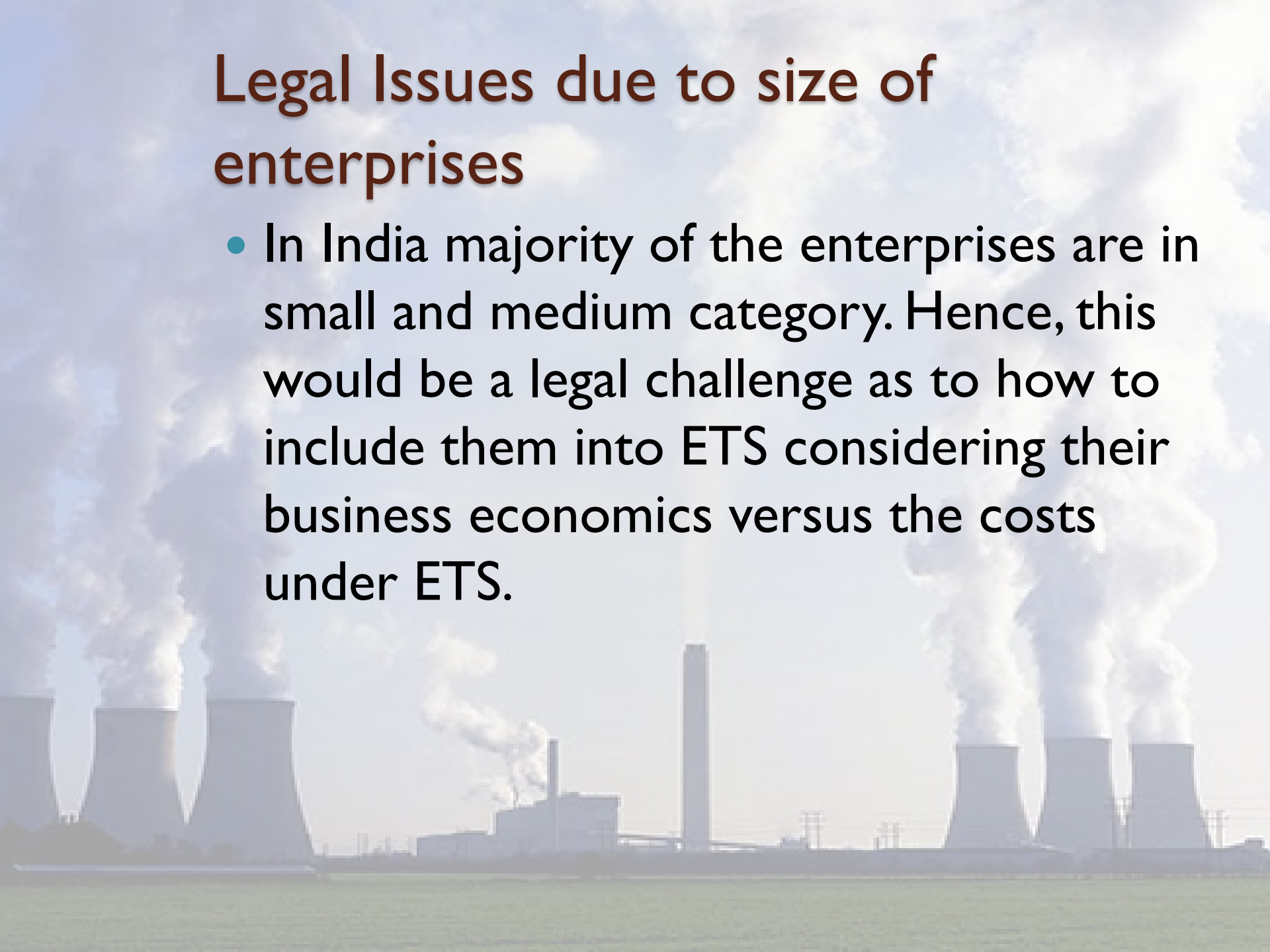
- Trading Rules need to be formulated and legalised for implementation of an ETS
- This being a new area for country like India, the rules and framework for the trading rules need to be carefully laid out
- The legal aspects for the registry required for implementation of ETS need to be carefully examined and laid out

Access to Courts

- After the implementation of an ETS in India, issues on rights and obligations of an industry's emissions are likely to arise
- Also litigations on trading allowances would arise
- Hence, special legal arrangement would be required for the emittent's access to the courts regarding his new obligations

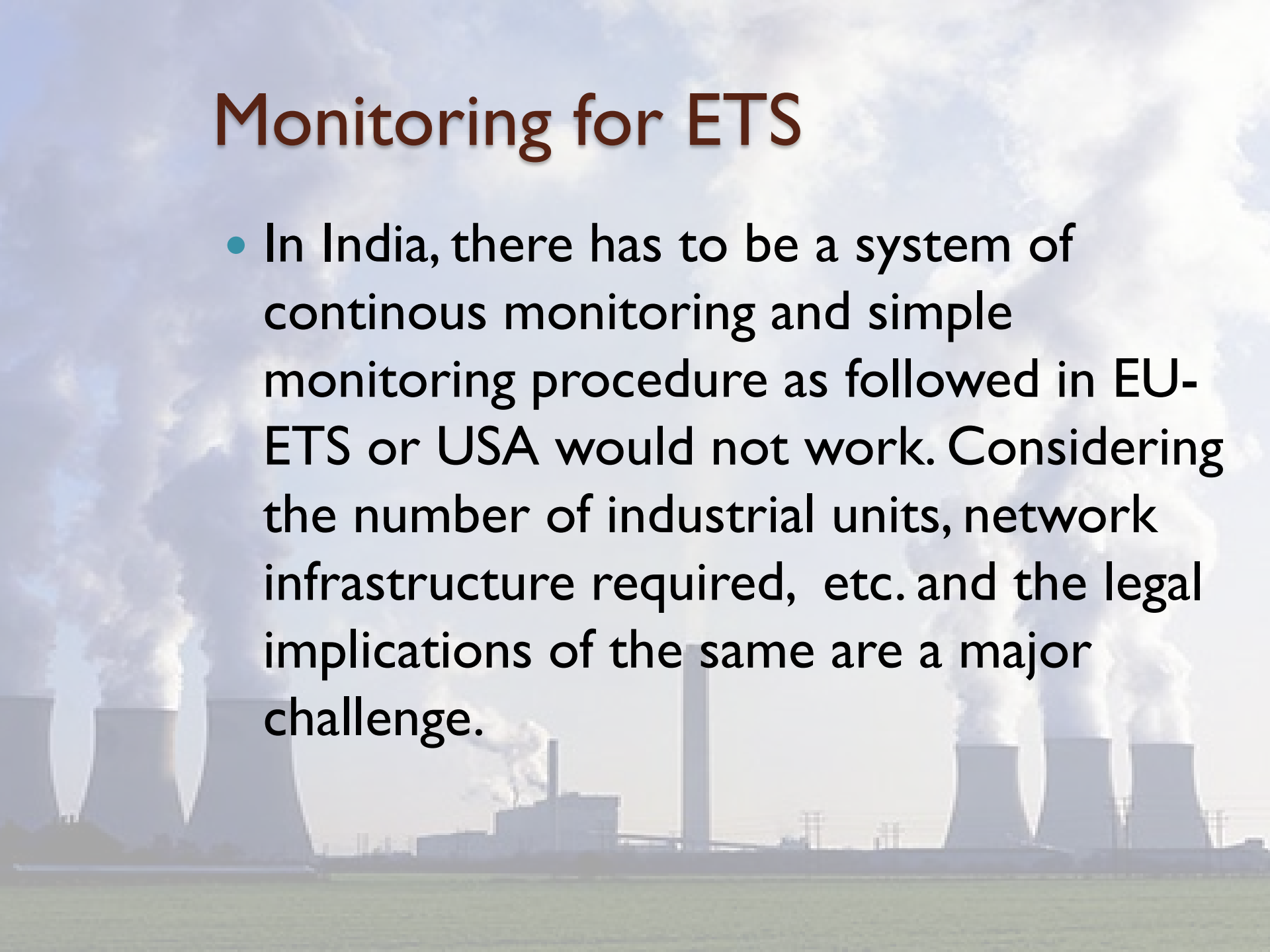
Legal Issues due to size of enterprises

- In India majority of the enterprises are in small and medium category. Hence, this would be a legal challenge as to how to include them into ETS considering their business economics versus the costs under ETS.



Monitoring for ETS

- In India, there has to be a system of continuous monitoring and simple monitoring procedure as followed in EU-ETS or USA would not work. Considering the number of industrial units, network infrastructure required, etc. and the legal implications of the same are a major challenge.



Conclusion

- Taxes and trading schemes are important policy instruments which should be seen to be complementary with environmental regulations, informational campaigns, subsidies etc.
- Even if an ETS comes with several benefits, due diligence needs to be done if such a scheme is implemented in India esp. in context with the legal challenges arising from an ETS.
- An ETS would require an absolute emissions cap which India could do well to avoid to keep its economy growing and competitive.
- India's contribution to stock of emission is only 2% of the world's emission. Hence, even though the incremental rise in emission is large, the contribution to cumulative emission will remain lower than that of developed countries in the business-as-usual case.
- Hence the issue is not only moral but also economical thus making the legal challenges even more important and point of focus

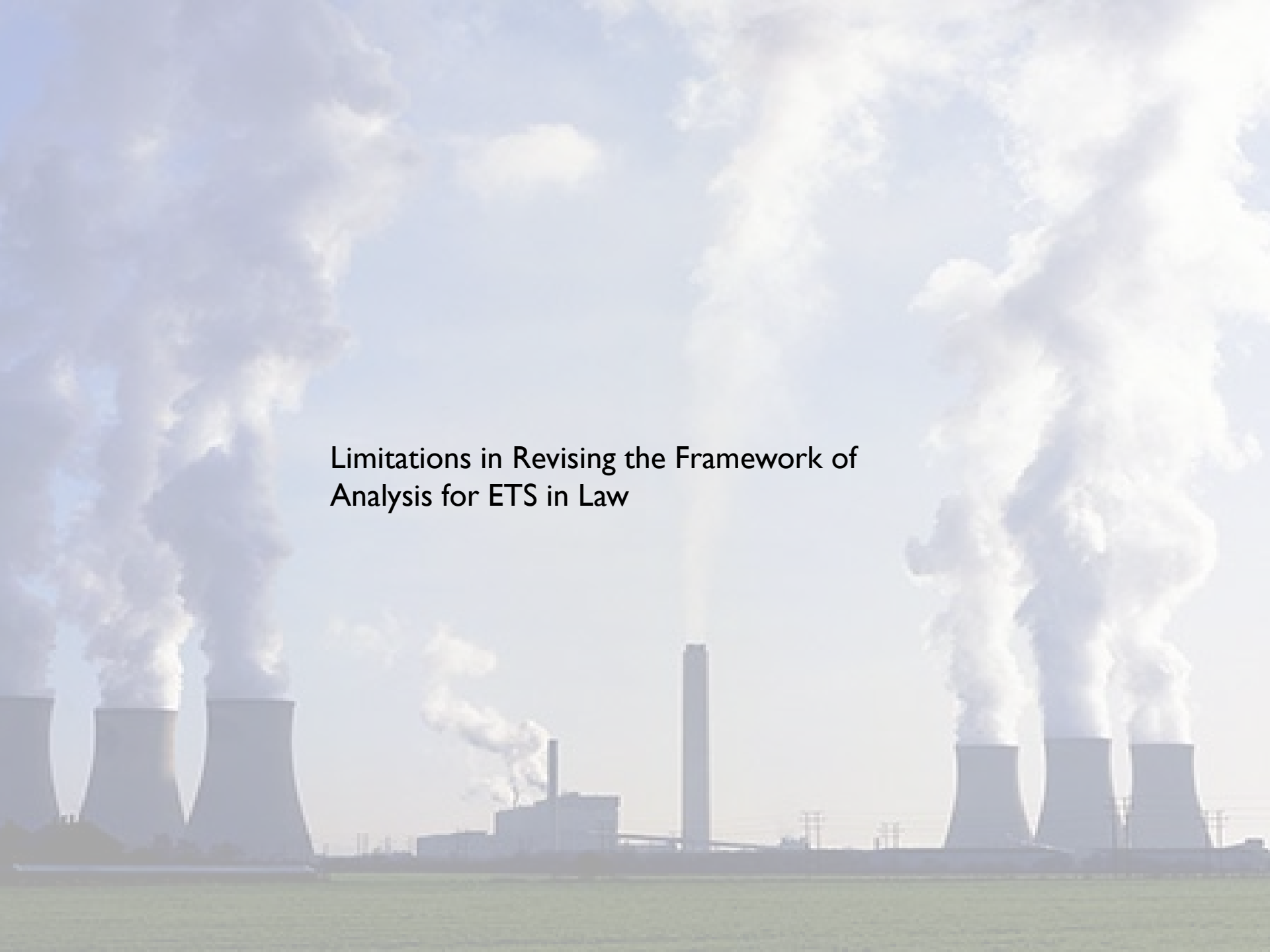


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Limitations in Revising the Framework of
Analysis for ETS in Law