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## GLAWCAL COMMENT #188

### COULD CHINA'S SOCIAL MEDIA POLICY REPRESENT A VIOLATION OF WTO RULES?

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*Based on*

**Danny Friedmann "Rise and Demise of  
U.S. Social Media in China, A Touch-  
stone of WTO and BIT Regulations"**



**gLAWcal**  
Global Law Initiatives for Sustainable Development

## A gLAWcal comment on Danny Friedmann “Rise and Demise of U.S. Social Media in China, A Touchstone of WTO and BIT Regulations” in Paolo Davide Farah and Elena Cima (Eds.) China’s Influence on Non-Trade Concerns in International Economic Law

may be classified as value-added telecommunication services, and China has G.A.T.S. commitments that require it to grant nationwide market access to foreign companies that have a share of 50 per cent or less, via a joint venture. However, even though some social media companies might be willing to abide by Chinese censorship rules, the government has banned Facebook, Twitter, and YouTube. Therefore, it can be argued that China has violated the market access national treatment provision. Overall, the Chinese government uses social media as an instrument to censor and guide its population, and it does not trust foreign companies to control its people accordingly. Therefore, even if a company wins a WTO or BIT case, the government may still make market access de facto impossible.

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From 2007 to 2010, China added more Internet users than there are people in the United States (US). This high growth, in combination with a low saturation level, makes China the most promising market in the world for companies that want to provide Internet services. However, China has restricted foreign social media, including Facebook, Twitter, and YouTube, by either blocking the sites or making access so erratic or slow that discouraged Internet users shun them – even if Facebook launched a Chinese language version of its site in 2008, China banned the US social network site a year later, and CEO Mark Zuckerberg visited China twice to see whether he could establish a joint venture with a Chinese firm. Since foreign social media sites have been banned, three Chinese social media sites, all listed in the New York Stock Exchange or NASDAQ, are thriving, partly because Chinese social media does not face foreign competition within the domestic market.<sup>7</sup> However, doing business in China remains difficult for them as well since they have to abide by ever more stringent censorship regulations. Although the Chinese government’s policy is undoubtedly a gross violation of the freedom of expression protected by human rights treaties, these treaties are either toothless or irrelevant to China and cannot be used to force open the Chinese market. What remains are the WTO and BIT regulations. Bringing a case against China before the WTO is promising; however, aggrieved companies must lobby their home government because they cannot bring the case directly themselves. Alternatively, social media

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