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## I. Administrative Law

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## I. ADMINISTRATIVE LAW

### Leaf Tobacco Exporters Association, Inc. v. Block: *The Role of the Zone of Interests Standing Test in Denial of Standing to Challenge Agency Action*

Article III of the United States Constitution limits the jurisdiction of the federal courts solely to cases and controversies.<sup>1</sup> A case or controversy arises when a claimant has asserted a sufficiently personal interest in the result of a claim to guarantee that the claim is concrete and adverse.<sup>2</sup> To have standing to sue in federal court, claimants must satisfy not only the basic article III case or controversy requirement,<sup>3</sup> but also various prudential standing tests.<sup>4</sup>

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1. See U.S. CONST. art. III, § 2 (power of federal judiciary encompasses cases and controversies in law or equity arising under Constitution, United States laws, and treaties). Article III of the United States Constitution establishes the judiciary as the third branch of government. *Id.* § 1; see also *id.* art. I (investing legislative power in Congress); *id.* art. II (investing Executive power in President). Article III vests the judicial power in the United States Supreme Court and those inferior courts that Congress sees fit to establish. *Id.* art. III, § 1.

2. See *Baker v. Carr*, 369 U.S. 186, 204 (1962) (claimant must allege personal stake in action to demonstrate existence of concrete case or controversy). The article III concept of case or controversy comprises the specific elements of the justiciability doctrine. See generally L. Brillmayer, *The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement*, 93 HARV. L. REV. 297, 298-99 (1979). For a case to be justiciable, that case must meet the requirements of mootness, ripeness, and standing. *Id.* A case is moot, and therefore is not justiciable, when a court's decision would not resolve the facts of the particular case. See *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937) (case is moot when court's order will not operate on any subject matter). For example, cases may become moot when the issue involves a statute governing rights of infants, and the complainant exceeds the age of infancy before the court rules on the merits. See *Atherton Mills v. Johnston*, 259 U.S. 13, 15 (1922). (Claim brought under infancy statute is moot when claimant is no longer an infant). A case is unripe and, thus, not justiciable under article III if the case turns on a hypothetical threat of injury that has not yet materialized as a specific injury. See *United Pub. Workers of Am. v. Mitchell*, 330 U.S. 75, 89-91 (1947) (hypothetical threat does not satisfy Article III case or controversy requirement). See generally NOWAK, ROTUNDA & YOUNG, *CONSTITUTIONAL LAW* 72 (2d ed. 1983) (discussing ripeness doctrine) [hereinafter cited as NOWAK]. In addition, for a case to be justiciable, the claimant must have standing to sue on the claim brought. See NOWAK, *supra*, at 77 (discussing various standing tests); see also *infra* notes 4-6 and accompanying text (discussing standing generally under article III); *infra* notes 6-10 and accompanying text (discussing zone of interests standing test).

3. See *Flast v. Cohen*, 392 U.S. 83, 101 (1968). In *Flast v. Cohen*, the United States Supreme Court described the basis of article III standing inquiry as whether the claim for which a claimant seeks adjudication alleges concrete harm sufficient to create the adversary nature traditionally considered necessary to make a claim judicially resolvable. *Id.*; see also *supra* notes 1-2 (discussing article III case or controversy requirement).

4. See Note, *A Defense of the "Zone of Interests" Standing Test*, 1983 DUKE L.J. 447, 448 (1983) (discussing prudential standing tests). Prudential standing tests embody the divergent policy considerations inherent in different types of court claims, thus there are different kinds of standing tests. See *id.* at 447-48. One example of a standing test is the nexus test for taxpayer standing. See *Flast*, 392 U.S. at 102 (applying nexus test to question of taxpayer's standing). The prudential nexus standing test requires a claimant to allege that a nexus exists between the

Prudential standing tests are judge made rules created to prevent abuse of the judicial process and to preserve separation of powers.<sup>5</sup>

In *Association of Data Processing Service Organizations, Inc. v. Camp*,<sup>6</sup> the United States Supreme Court created the zone of interests standing test, designed to govern courts' prudential considerations of the standing of parties who claim injury through governmental agency action in violation of a federal statute.<sup>7</sup> Claimants charging illegal agency action may satisfy the article III case or controversy standing inquiry by alleging injury-in-fact.<sup>8</sup> Allegation of injury-in-fact establishes the concrete adversity necessary to an article III case or controversy.<sup>9</sup> In addition, claimants charging illegal agency action must satisfy the prudential element of standing.<sup>10</sup> To satisfy the prudential element of standing, a claimant's allegedly injured interest must have been arguably within the zone of interests protected or regulated by the federal statute under which the claimant brought suit.<sup>11</sup> An important issue arising from the use of the zone of interests test is whether a claimant who satisfies the constitutional standing requirements by sustaining injury-in-fact may lack standing to litigate the claim for failure to satisfy the prudential zone of interests test.<sup>12</sup> In *Leaf Tobacco Exporters Association, Inc. v.*

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claimant's status as a taxpayer and the constitutional violation that the claimant alleged has occurred. *Id.* In addition, taxpayers must satisfy the constitutional element of standing by alleging injury-in-fact. *Id.* at 103. Another prudential standing test is the zone of interests test. See *infra* notes 6-10 and accompanying text (discussing use of zone of interests test in cases involving standing to challenge agency action). See generally Note, *supra*, at 447-48 (discussing zone of interests prudential standing test).

5. See *Flast*, 392 U.S. at 96-97 (standing requirements properly limit federal courts to role consistent with separation of powers); Brilmayer, *The Jurisprudence of Article III: Perspectives on the "Case of Controversy" Requirement*, 93 HARV. L. REV. 297, 300 (1979) (standing requirements prevent abuse of judicial process by requiring courts to decide only real cases). Standing requirements prevent or reduce abuse of judicial process by requiring courts to refuse to adjudicate abstract legal issues if claimants do not present the issues in an actual controversy involving injury. *Flast*, 392 U.S. at 96-97. Separation of powers is an important policy goal because maintaining separation of powers limits the activities of each of the three branches of government to activities consistent with each branches' constitutional purpose. See NOWAK, *supra* note 2, at 136-37. Some duplication of activities is judicially acceptable. See *Nixon v. Administrator of Gen. Serv.*, 433 U.S. 425, 443 (1977) (complete separation of powers is archaic). Nevertheless, courts generally follow a well established policy in favor of judicial self-restraint in order to avoid unwarranted judicial oversight of legislative branch decisions. See Brilmayer, *supra*, at 302 (courts frequently cite judicial self-restraint principle in declining to address merits of claims for lack of standing).

6. 397 U.S. 150 (1970).

7. See *Association of Data Processing Serv. Org. Inc. v. Camp*, 397 U.S. 150, 152-53 (1970) (discussion of zone of interests standing test); *infra* notes 11-12 and accompanying text (discussing components of zone of interest test); see also *infra* notes 65-72 and accompanying text (discussing *Data Processing*).

8. See *Data Processing*, 397 U.S. at 152 (claimant who alleges economic injury-in-fact resulting from challenged agency action satisfies article III case or controversy requirement).

9. *Id.*

10. See *supra* note 4 and accompanying text (discussing prudential standing tests).

11. See *Data Processing*, 397 U.S. at 153 (to satisfy zone of interests test, claimant must demonstrate that statute protected or regulated claimant's interests).

12. See *Leaf Tobacco Exporters Ass'n., Inc. v. Block*, 749 F.2d 1106, 1116 (4th Cir.

*Block*,<sup>13</sup> the United States Court of Appeals for the Fourth Circuit applied the zone of interests test to determine whether the Association of Tobacco Exporters (the Exporters) had standing to challenge the United States Secretary of Agriculture's decision to permit a tobacco growers cooperative to enter the tobacco exporting market.<sup>14</sup>

In *Leaf Tobacco*, the Exporters sought to challenge the United States Department of Agriculture's (USDA) decision to change the USDA's policy of prohibiting a tobacco growers cooperative, which participated in a USDA price support program, from marketing the grower's tobacco crop directly to foreign buyers.<sup>15</sup> The USDA establishes an annual support price for flue-cured tobacco.<sup>16</sup> The annual support price enables growers who are unable to sell tobacco at a price higher than the support price to sell the tobacco at the support price to the Flue Cured Tobacco Stabilization Corporation (the Cooperative).<sup>17</sup> The Cooperative purchases and processes the tobacco with

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1984). In *Leaf Tobacco Exporters Assoc. Inc. v. Block*, the United States Court of Appeals for the Fourth Circuit denied standing to claimants who had properly demonstrated injury-in-fact, the first part of the standing test. *Id.* at 1108; see *infra* notes 15-61 and accompanying text (discussing facts and reasoning in *Leaf Tobacco*). The Fourth Circuit in *Leaf Tobacco* noted that denial of standing to a claimant who has suffered concrete injury may seem unjust. *Leaf Tobacco*, 749 F.2d at 1116. The appearance of unfairness stems from the fact that denial of standing necessarily precludes injured claimants from obtaining any judicial relief. See *infra* notes 33-40 and accompanying text (discussing policy considerations supporting validity of zone of interests test). The *Leaf Tobacco* court, however, concluded that threats of unjustified judicial interference outweigh the possible risk that the failure to grant standing may preclude any possibility of judicial review. *Leaf Tobacco*, 749 F.2d at 1112-13; see also *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227 (1974) (Courts cannot grant standing to plaintiff merely due to lack of other available plaintiffs).

13. 749 F.2d 1106 (4th Cir. 1984).

14. *Id.* at 1108. Plaintiffs in *Leaf Tobacco* comprised an association of commodity brokers engaged in the selling of tobacco to buyers who included foreign purchasers. *Id.* The Association of Tobacco Exporters (Exporters) consisted of 47 member companies of commodity brokers. *Id.*

15. *Id.* at 1108; see *infra* note 16 and accompanying text (discussing purpose and framework of tobacco support price system).

16. See 749 F.2d at 1108. The Fourth Circuit in *Leaf Tobacco* noted that the 1949 Agriculture Act (1949 Act) price support system created price support systems for various farm products. See 1949 Agriculture Act, 7 U.S.C. §§ 1421-1449 (1982) (creating price support system for various farm products). Section 1421(d) of the 1949 Act provides that agencies should determine support prices based upon the parity price of products on a seasonal basis. 7 U.S.C. § 1421(d) (1982). In arriving at a support price, the Secretary of Agriculture must consider such factors as supply and demand of the specific product, availability of funds, perishability of the commodity, and the product's importance to the national agricultural economy. 7 U.S.C. § 1421(b) (1982). The 1949 Act's support price scheme also governs products other than tobacco, such as feed grains, corn and sorghum. 7 U.S.C. § 1421(b) (1982).

17. See 749 F.2d at 1108-09 (growers may sell tobacco to Cooperative at support price when growers are unable to sell tobacco for higher price). Congress established the Cooperative price support program to stabilize farmers' incomes. See S. REP. NO. 1022, 80th Cong. 2d Sess. 1, 3 (1948) reprinted in 1948 U.S. CODE CONG. & AD. NEWS 2138, 2141 (CCC Act's purpose is to stabilize farm economy and support farm income); see *infra* notes 82-85 and accompanying text (discussing CCC Act's legislative history); *infra* notes 18-22 and accompanying text (discussing framework of CCC-Cooperative arrangement).

funds borrowed from the Commodity Credit Corporation (the CCC).<sup>18</sup> The CCC is an agency of the USDA.<sup>19</sup> The CCC retains veto power over sales that the Cooperative makes, to protect the CCC's investment.<sup>20</sup> Until 1982, the CCC pursued an unwritten policy of prohibiting the Cooperative from selling Cooperative tobacco directly to foreign buyers<sup>21</sup> because the CCC feared that the Cooperative's lack of expertise in foreign markets would result in increased Cooperative deficits to the CCC.<sup>22</sup> In 1982, however, the CCC abandoned the CCC's prohibition on the Cooperative's participation in foreign trade in hopes that the Cooperative's participation in the foreign tobacco market would yield sufficient profits to decrease the Cooperative's indebtedness to the CCC.<sup>23</sup>

The Exporters objected to the CCC's discontinuance of the policy prohibiting the Cooperative from selling directly to foreign buyers.<sup>24</sup> The

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18. See CCC Charter Act (CCC Act), 15 U.S.C. § 714 (1982). The CCC is an agency of the United States Department of Agriculture (USDA). *Id.* The CCC's purpose is to stabilize, support, and protect farm income through the implementation of price support programs. *Id.* In addition, the CCC helps to maintain acceptable supply levels of agricultural commodities. *Id.* Moreover, the CCC Act charges the CCC with aiding in the orderly distribution of agricultural products. *Id.*; see also *Leaf Tobacco*, 749 F.2d at 1108-09 (discussion of purpose and operation of CCC in *Leaf Tobacco*).

19. See 15 U.S.C. § 714 (1982) (CCC is a United States Government agency under control of USDA).

20. See 749 F.2d at 1109. The *Leaf Tobacco* court noted that the CCC protected the CCC's investment in the Cooperative by retaining the right to prohibit the Cooperative from entering into any contracts that the CCC believed would be financially unsound. *Id.*; see also 7 C.F.R. § 1464.2(b)(iii) (1985) (CCC has veto power over proposed Cooperative sales).

21. See 749 F.2d at 1109. (CCC until 1982 prohibited Cooperative from selling directly to foreign buyers). The *Leaf Tobacco* court noted that the CCC prohibition regarding foreign sales was merely an unwritten CCC policy, used in approving or disapproving Cooperative sales contracts. *Id.* The CCC based the unwritten policy on the conclusion that the Cooperative lacked expertise in dealing with foreign buyers and that this lack of expertise would result in a loss of money to the Cooperative. *Id.*

22. See *supra* note 20 and accompanying text (discussing CCC purpose for prohibiting Cooperative from selling directly to foreign buyers).

23. See 749 F.2d at 1109. The Fourth Circuit in *Leaf Tobacco*, noted that on November 30, 1981 the USDA issued a press release describing the new policy of allowing the Cooperative to sell tobacco in foreign markets. *Id.* The new policy took effect in 1982. *Id.* The USDA described the new policy as a companion to the No Net Cost Tobacco Program Act of 1982. *Id.*; see No Net Cost Tobacco Program Act, 7 U.S.C. § 1445 (1982). The No Net Cost Program provided that the Cooperative contribute the Cooperative's profits into a fund designed to cover any Cooperative debts to the CCC occurring in years in which the Cooperative was unable to repay the CCC loans. 7 U.S.C. § 1445.1 (1982). The USDA hoped that the new policy of permitting the Cooperative to sell to foreign buyers would decrease the Cooperative's indebtedness to the CCC. *Leaf Tobacco*, 749 F.2d at 1109.

24. See 749 F.2d at 1110. The Exporters claimed that the Exporters took part in the foreign tobacco purchaser's market. *Id.* Furthermore, the Exporters claimed that the Exporters' based planned investments in the export market on the previous USDA policy of prohibiting tobacco growers from entering the export market directly. *Id.* The Exporters claimed that new competition from the Cooperative was unfair because the Cooperative obtained funds from the CCC at low Government rates. *Id.* The CCC based the interest rate on CCC loans on the

Exporters asserted that the Secretary of Agriculture had violated section 553 of the Administrative Procedure Act (APA) by neglecting to notify interested parties of the proposed change in policy.<sup>25</sup> Furthermore, the Exporters argued that the CCC Charter Act<sup>26</sup> (the CCC Act) and the Agricultural Act of 1949<sup>27</sup> (the 1949 Act) protected the Exporters' interests. The CCC Act and the 1949 Act govern the federal government's tobacco policies.<sup>28</sup> The Exporters claimed that the USDA's 1982 policy change injured interests of the Exporters that the CCC Act and the 1949 Act protect.<sup>29</sup> The Exporters presented these claims to the USDA and then filed suit in the United States District Court for the Eastern District of North Carolina.<sup>30</sup> The district court dismissed the

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Cooperative on Treasury Department monthly determinations of cost of money to the Treasury. *Id.* Treasury Department interests rates vary from the standard prime lending rate. *See* Wall St. Journal, Nov. 19, 1985 at 48 col. 1 (listing interest rates). For example, on November 19, 1985, the Treasury Department rate was 7.26%, while the prime rate was 9.5%, a difference of 224 basis points. *Id.*

25. *See* 749 F.2d at 1110. In *Leaf Tobacco*, the Exporters claimed that the USDA violated § 553 of the Administrative Procedure Act (APA) by failing to give prior notice to interested parties like the Exporters of the proposed policy change allowing the Cooperative to sell to foreign buyers. *Id.*; *see* Administrative Procedure Act, 5 U.S.C. § 553 (agencies contemplating informal or formal rulemaking must give notice and opportunity to comment to interested parties). Section 553 of the APA requires notice to interested parties through publication in the Federal Register when agencies contemplate legislative formal or informal rulemaking. 5 U.S.C. § 553 (1982). Section 553(b)(B), however, does not require notice and comment when the rule is interpretive, rather than legislative in nature. 5 U.S.C. § 553(b)(B) (1982); *see* PIERCE, SHAPIRO, & VERKUIL, ADMINISTRATIVE LAW AND PROCESS (1985) [hereinafter cited as PIERCE] § 6.4.4a (APA does not require notice and comment for interpretive rules). Generally, a rule is legislative if the rule creates legally enforceable duties that did not exist prior to the rule. PIERCE, *supra*, at § 6.4.4a. A rule is interpretive if the rule intends to clarify the substance and character of an already existing statute or legislative rule. PIERCE, *supra*, at § 6.4.4a. Adjudication of the merits of the Exporters' claims in *Leaf Tobacco*, therefore, would probably turn on whether the Fourth Circuit held the USDA's policy change to be an interpretive rule. *See supra* notes 22-23 and accompanying text (discussing USDA's policy change).

26. *See* 15 U.S.C. § 714(a)-(p) (1982) (establishing CCC for purpose of stabilizing, supporting and protecting farm income and prices). *See infra* notes 82-85 and accompanying text (discussing legislative history of CCC Act).

27. *See* 7 U.S.C. §§ 1421-1432 (1982) (requiring Secretary of Agriculture to provide price supports through CCC).

28. *See supra* notes 14-22 and accompanying text (discussing purpose and provisions of CCC Act and 1949 Act).

29. *See* 749 F.2d at 1110. In *Leaf Tobacco*, the Exporters claimed that the CCC Act and the 1949 Act required the Secretary of Agriculture to consider the Exporters' interests when making decisions such as the 1982 policy change, which allowed growers to sell to foreign buyers. *Id.* The Exporters asserted that the Secretary's failure to consider the Exporters' interests constituted an arbitrary and capricious decision, and an abuse of discretion. *Id.*

30. *Id.* Generally, claimants must exhaust administrative remedies before courts will accept jurisdiction to review agency action. *See* PIERCE, *supra* note 25, at § 5.7.3 (discussing exhaustion doctrine); *see also* Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938) (district courts have no power to issue injunctions when plaintiff has not exhausted all administrative remedies). The USDA regulations regarding rulemaking procedures require interested parties who seek to challenge USDA rules to file a petition with the official who promulgated the rule. 7 C.F.R. Subtitle A § 1.28 (1985). Since the *Leaf Tobacco* court held that the Exporters lacked

Exporters' suit on the ground that the Exporters lacked standing to challenge the administrative action that the USDA performed through the CCC.<sup>31</sup> On appeal, the United States Court of Appeals for the Fourth Circuit upheld the district court's dismissal on the ground that the Exporters failed to satisfy the prudential standing considerations of the zone of interests standing test.<sup>32</sup>

In *Leaf Tobacco*, the Fourth Circuit noted that the Supreme Court frequently had cited and applied the zone of interests test in cases concerning standing to challenge agency action.<sup>33</sup> The Fourth Circuit, therefore, stated that the Exporters must satisfy the zone of interests test to have standing to challenge the USDA's actions.<sup>34</sup> The *Leaf Tobacco* court observed that the

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standing, the court never considered the merits of the Exporters' claim that the USDA's policy change constituted a rulemaking. See 749 F.2d at 1110 (refusing to consider merits because Exporters lack standing to challenge USDA's action); *infra* notes 64-92 and accompanying text (discussing support for *Leaf Tobacco* holding that Exporters have no standing to challenge USDA's action). The *Leaf Tobacco* court, therefore, did not consider whether the USDA policy change constituted a rulemaking. See *supra* note 25 (discussing merits of Exporters' claims). Since the *Leaf Tobacco* court never ruled on whether the USDA's action was a rulemaking, the court did not have to determine whether the Exporters had exhausted the Exporters' administrative remedies. See 7 C.F.R. Subtitle A § 1.28 (1985) (requiring interested parties to file petition challenging agency rule with official who issued rule).

31. 749 F.2d at 1108. The Fourth Circuit in *Leaf Tobacco* cited the unpublished opinion of the United States District Court for the Eastern District of North Carolina, which dismissed the Exporters' claims for lack of standing. *Id.*

32. *Id.* at 1110. The *Leaf Tobacco* court dismissed the Exporters' claim for lack of standing. *Id.* The *Leaf Tobacco* court held that the Exporters lacked standing because the Exporters failed to satisfy the prudential considerations of the zone of interests test. *Id.* The court held that the Exporters failed the zone of interests test because the Exporters had not adequately proven that the Exporters' interest in avoiding increased competition from the Cooperative arguably was within the zone of interests that Congress intended to protect under the CCC Act or the 1949 Act. 749 F.2d at 1110; see 15 U.S.C. § 714(a)-(p) (1982) (CCC Act) (CCC Act protects interests of farmers); 7 U.S.C. §§ 1421-1432 (1982) (1949 Act) (1949 Act protects interests of farmers); see also *infra* notes 81-91 and accompanying text (discussing legislative intent of CCC Act and 1949 Act).

33. 749 F.2d at 1111; see *infra* notes 64-80 and accompanying text (comparing *Leaf Tobacco* with *Data Processing*).

34. See 749 F.2d at 1110. Although the Fourth Circuit held the zone of interests test applicable in *Leaf Tobacco*, the court noted that the test has been the subject of academic controversy. *Id.* The *Leaf Tobacco* court cited articles and treatises of three of the zone of interests test's critics as evidence of academic controversy. *Id.* The opinion of one commentator, Davis, is that courts should discard the zone of interests test as a prerequisite for standing; see 4 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 24:17 (2d ed. 1982 [hereinafter cited as DAVIS]). Davis argues that the element of injury-in-fact should be the only test for standing because injury-in-fact satisfies the Article III standing requirement. DAVIS, *supra*, § 24.17. Another commentator, Marquis, argues that the substance of a zone of interests standing inquiry goes to issues usually resolved in a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which a court can grant relief. Marquis, *The Zone of Interests Component of the Federal Standing Rules: Alive and Well After All?*, 4 U. ARK. LITTLE ROCK L.J. 261, 285 (1981); see also FED. R. CIV. P. 12(b)(6) (party may move to dismiss for failure to state claim upon which court can grant relief). Marquis, therefore, believes that courts should address threshold questions such as standing and reviewability together with the question

zone of interests test preserves the separation of powers by requiring the judiciary to refrain from adjudicating political claims which are better suited to legislative resolution.<sup>35</sup> Moreover, the Fourth Circuit in *Leaf Tobacco* reasoned that the zone of interests test is important because the test reserves the right to challenge, and thus to shape, statutory schemes of benefits to those parties whom Congress intended to be the statutes' beneficiaries.<sup>36</sup> The Fourth Circuit reasoned that the zone of interests test limits standing to individuals that Congress intended to protect under a specific statute and, therefore, reserves the benefits provided under the statute to Congress' intended beneficiaries.<sup>37</sup> The *Leaf Tobacco* court observed that participation in shaping a statutory program, through litigating statutory challenges, is a valuable benefit inherent in any statute.<sup>38</sup> The *Leaf Tobacco* court recognized that the zone of interests test served initially as part of a trend to expand the class of claimants who had standing.<sup>39</sup> The *Leaf Tobacco* court, however, emphasized that the nature of the zone of interests test will operate to prohibit some plaintiffs from litigating substantive claims.<sup>40</sup>

After finding the zone of interests test applicable to the Exporters' claims, the *Leaf Tobacco* court determined whether the Exporters satisfied the article III case or controversy requirement.<sup>41</sup> The Fourth Circuit in *Leaf Tobacco* concluded that the Exporters satisfied the article III element of standing inquiry by demonstrating an injury-in-fact.<sup>42</sup> The court reasoned

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of stating a claim upon which the court can grant relief under Rule 12(b)(6). Marquis, *supra*, at 285. A third commentator, Albert, argues that standing inquiry actually implicates the merits of a claim and, therefore, courts should view standing as a substantive rather than threshold issue. Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief*, 83 YALE L.J. 425, 426 (1974). *But see* Note, *supra* note 4, at 448-49 (proper application of zone of interests test prevents abuse of judicial process and promotes separation of powers).

35. 749 F.2d at 1111, 1116; *see* Tax Analysts and Advocates v. Blumenthal, 566 F.2d 130, 140 (D. C. Cir. 1977) (zone of interests test promotes separation of powers), *cert. denied*, 434 U.S. 1086 (1978).

36. 749 F.2d at 1111.

37. *Id.*

38. *Id.*

39. *Id.* at 1115; *see Data Processing*, 397 U.S. at 154 (trend is to enlarge class of parties who have standing to challenge agency action). The Supreme Court liberalized standing requirements to avoid the defect of previous standing tests which tended to implicate in the threshold nature of standing inquiry a foray into the merits of claimants' substantive case. Note, *supra* note 4, at 449-50.

40. *See* 749 F.2d at 1111. The *Leaf Tobacco* court cited United States Supreme Court precedents to support the *Leaf Tobacco* court's observation that some parties will not have standing under the zone of interests test. *Id.*; *see* Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 227 (1974) (courts will not grant standing merely because no other acceptable plaintiff exists to ensure adjudication of merits of claim); Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 489 (1982) (to grant standing merely to assure that a court will address an issue would turn standing doctrine into requirement that courts would observe only when claimants satisfied requirement).

41. 749 F.2d at 1112; *see infra* note 42 (discussing how Exporters satisfy article III standing requirement).

42. *See* 749 F.2d at 1112 (Exporters satisfy article III standing requirement by alleging

that the Exporters' assertion of economic harm resulting from increased competition due to the growers' entry into the foreign market constituted injury-in-fact.<sup>43</sup>

Although the *Leaf Tobacco* court concluded that the Exporters satisfied the article III element of standing, the court held that the Exporters failed to satisfy the prudential considerations of the zone of interests test.<sup>44</sup> The *Leaf Tobacco* court stated that the zone of interests test required the Exporters to demonstrate that the injury to the Exporters' ability to compete was arguably within the zone of interests that Congress intended to protect or regulate under the CCC Act and the 1949 Act.<sup>45</sup> To determine whether the Exporters satisfied the test's requirements, the *Leaf Tobacco* court examined the legislative intent of the statutes upon which the Exporters based the Exporters' claims.<sup>46</sup> Applying a limited analysis, which the Fourth Circuit considered appropriate to the threshold question of standing, the Fourth Circuit determined that the language of section 1427 of the 1949 Act might protect the interests of commodity brokers such as the Exporters.<sup>47</sup> The Fourth Circuit, however, stated that section 1427 of the 1949 Act protected the Exporters' interests only when the CCC's policies impaired the brokers' abilities to maintain sufficient inventories.<sup>48</sup> The Exporters did not claim that the new 1982 USDA policy resulted in excessive depletion of the Exporters' inventories.<sup>49</sup> The *Leaf Tobacco* court, therefore, held that section 1427 was not relevant to a determination of whether the Exporters had standing.<sup>50</sup>

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economic injury-in-fact resulting from increased competition from Cooperative with foreign tobacco purchasers).

43. *Id.*

44. *Id.*

45. *Id.* at 1113-14.

46. *Id.* The review of legislative history, which the Fourth Circuit applied in *Leaf Tobacco*, is the customary means for determining whether a statute arguably protects a claimants' interests under the zone of interests test. *See, e.g., Hartigan v. Federal Home Loan Bank Bd.*, 746 F.2d 1300, 1309 (7th Cir. 1984) (analyzing legislative history to deny standing under zone of interests test); *Tax Analysts and Advocates v. Blumenthal*, 566 F.2d 130, 143-44 (D.C. Cir. 1977) (same), *cert. denied*, 434 U.S. 1086 (1978); *Rodeway Inns of Am., Inc., v. Frank*, 541 F.2d 759, 765 (8th Cir. 1976) (same), *cert. denied*, 430 U.S. 945 (1977).

47. 749 F.2d at 1113.

48. *Id.*; *see infra* notes 81-91 and accompanying text (discussing legislative histories of CCC Act and 1949 Act).

49. 749 F.2d at 1113.

50. *See id.* The *Leaf Tobacco* court held that § 1427 of the 1949 Act was irrelevant to the Exporters' standing for two reasons. *Id.*; *see* 7 U.S.C. § 1427 (1982) (providing support price program governing CCC sales policies). First, the *Leaf Tobacco* court pointed out that the Exporters failed to claim that the new CCC policy depleted the Exporters' inventories. 749 F.2d at 1113. Second, the court observed that § 1427 governs CCC sales, and that the Exporters complained about Cooperative sales. *Id.*; *see* 7 U.S.C. § 1427 (1982) (section 1427 governs CCC sales only). Contract, rather than § 1427 of the 1949 Act under which the Exporters sued, governs the Cooperative's sales. 749 F.2d at 1113. *See* 7 U.S.C. § 1427 (1982) (support price programs governing CCC sales policies).

The Fourth Circuit next considered the Exporters' assertion that the CCC Act's statement of purpose, section 714, arguably indicates congressional intent to protect the Exporters' interests.<sup>51</sup> The *Leaf Tobacco* court acknowledged that statutory statements of purpose are instrumental in evaluating legislative intent.<sup>52</sup> The court also acknowledged the Exporters' assertion that the CCC Act intended to encourage orderly distribution of agricultural products.<sup>53</sup> The *Leaf Tobacco* court, however, refused to find standing based on the orderly distribution clause of section 714 of the CCC Act because the new CCC policy did not interfere with orderly distribution of tobacco.<sup>54</sup>

Finally, the *Leaf Tobacco* court addressed the Exporters' assertion that the enumeration of powers found in section 714(c) of Title 15 of the CCC Act demonstrated congressional intent to protect commodity brokers.<sup>55</sup> The Exporters asserted that the CCC Act's enumeration of powers required the CCC to use the usual modes of trade and commerce in implementing federal tobacco policy under the CCC Act.<sup>56</sup> The Fourth Circuit found no merit in the Exporters' assertion that the Exporters, as the ordinary channel for exporting tobacco, were entitled to protection from the Cooperative's competition in the export market.<sup>57</sup> While recognizing the relevance of the Exporters' section 714(c) claim to the prudential standing inquiry, the court emphasized that the primary goal of the CCC Act was to protect farmers.<sup>58</sup> The *Leaf Tobacco* court reasoned that to adopt the Exporters' proposed reading of the Act would result in protection of the Exporters, a group not referred to in section 714(c), at the expense of the growers, the group that Congress specifically intended to benefit.<sup>59</sup> Noting that courts should construe statutes as harmonious wholes,<sup>60</sup> the Fourth Circuit declined to accept an

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51. See 749 F.2d at 1114 (discussing CCC Act's statement of purpose); 15 U.S.C. § 714 (1982) (CCC Act's statement of purpose); see also *infra* notes 82-85 and accompanying text (discussing legislative history of CCC Act).

52. 749 F.2d at 1114.

53. *Id.*; see *infra* notes 82-85 and accompanying text (discussing legislative history of CCC Act).

54. 749 F.2d at 1114.

55. *Id.* at 1114; see U.S.C. § 714(c) (1982) (enumeration of CCC powers includes duty to use ordinary commercial channels when possible in implementing CCC policy).

56. 749 F.2d at 1114; see 15 U.S.C. § 714(c) (1982) (enumeration of CCC powers includes duty to use usual channels of commerce when possible).

57. 749 F.2d at 1114-15.

58. *Id.*; see *infra* notes 82-85 and accompanying text (discussing legislative history of CCC Act).

59. 749 F.2d at 1114-15.

60. See *id.* at 1115 (citing *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-32 (1973)). In *Weinberger v. Hynson*, the United States Supreme Court held courts should read statutes in the most harmonious and comprehensive manner possible, to understand the entire policy and purpose of the statute. *Weinberger*, 412 U.S. at 631-32. Allowing the Exporters' 714c claim would violate the harmonious whole principle because the Exporters' proposed interpretation of § 714(c) contradicts the statute's express primary purpose of protecting the interests of farmers. See 749 F.2d at 1115 (Exporters advocate incorrect statutory interpretation that violates harmonious whole principle of statutory construction).

unsupported interpretation of the CCC Act that would contravene the express purpose of the legislation.<sup>61</sup>

The United States Supreme Court rarely has applied the zone of interests test since creating the test in *Data Processing v. Camp*.<sup>62</sup> In addition, the Supreme Court has set forth few guidelines to govern the use of the zone of interests test.<sup>63</sup> Nevertheless, examination of the *Data Processing* case reveals similarities between *Data Processing* and *Leaf Tobacco*, and indicates that the Fourth Circuit was justified in applying the zone of interests test in *Leaf Tobacco*.<sup>64</sup> In *Data Processing*, the petitioners, who sold data processing services,<sup>65</sup> challenged the Comptroller of Currency's new policy, which permitted national banks to furnish data processing services to bank customers.<sup>66</sup> Petitioners claimed that the Bank Services Corporation Act of 1962,<sup>67</sup> which prohibits banks from performing any services other than banking services, protected the petitioners.<sup>68</sup> The absence of a common-law right against increased competition forced the petitioners to rely on the Bank Services Act to protect the petitioners from undue competition.<sup>69</sup>

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61. 749 F.2d at 1115.

62. See 749 F.2d at 1110. The *Leaf Tobacco* court cited various cases in which the Supreme Court applied the zone of interests test. *Id.*; see, e.g., *Investment Co. Inst. v. Camp*, 401 U.S. 617, 620 (1971) (claimants satisfied zone of interests test); *Arnold Tours, Inc. v. Camp*, 400 U.S. 45, 46 (1970) (claimants satisfied zone of interests test); *Barlow v. Collins*, 397 U.S. 159, 164-67 (1970) (claimants satisfied zone of interests test). In addition to citing cases in which the United States Supreme Court applied the zone of interests test, the *Leaf Tobacco* court cited instances in which the Supreme Court has mentioned the test. See 749 F.2d at 1110 n.8 (citing Supreme Court cases which mention, but do not apply, the zone of interests test); see *Allen v. Wright*, \_\_\_ U.S. \_\_\_, 104 S. Ct. 3315, 3325 (1984) (citing zone of interests standing test); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475 (1982) (same); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 n.6 (1979) (same); *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 39 n.19 (1976) (same); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227 n.16 (1974) (same); *United States v. Richardson*, 418 U.S. 166, 176 n.9 (1974) (same); *United States v. SCRAP*, 412 U.S. 669, 686 (1973) (same); *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972) (same).

63. See Note, *supra* note 4, at 453-56 (discussing lack of Supreme Court guidance for when courts should apply zone of interests test, and proper method of application).

64. See *infra* notes 65-72 and accompanying text (discussing Supreme Courts' application of zone of interests test).

65. *Data Processing*, 397 U.S. at 151. Petitioners in *Data Processing* sold data processing services commercially. *Id.*

66. See *id.* at 151. Petitioners in *Data Processing* challenged the Comptroller of Currency's decisions to permit banks to provide data processing services to banks and bank customers as part of providing general banking services. *Id.* The Comptroller of the Currency is the administrator of all national banks. UNITED STATES GOVERNMENT MANUAL at 110. (1984-85 ed.) The Comptroller's responsibilities include carrying out national banking laws and promulgating rules and regulations that govern the functioning of national banks. *Id.* at 110.

67. 12 U.S.C. § 1864 (1982).

68. See 397 U.S. at 151. Petitioners in *Data Processing* asserted that § 1864 of the Bank Services Corporation Act prohibits banks from performing nonbanking activity. *Id.*; see also 12 U.S.C. § 1864 (1982) (no bank services corporation may perform any activity other than providing bank services for banks).

69. See Note, *supra* note 4, at 449 n.11. In 1982, the United States Supreme Court adopted the English common-law rule that economic damage resulting from lawful competition

The *Data Processing* Court held that petitioners had standing to challenge the Comptroller's action.<sup>70</sup> Applying the newly created zone of interests test, the Court held that petitioners satisfied article III standing requirements because the alleged economic damage caused by increased competition constituted injury-in-fact.<sup>71</sup> In addition, the *Data Processing* Court emphasized that the interest to which petitioners claimed injury was arguably within the zone of interests that Congress intended to protect when Congress prohibited banks from engaging in nonbanking activity.<sup>72</sup>

The petitioners in *Data Processing* alleged that the petitioners sustained economic injuries as a result of increased competition.<sup>73</sup> Similarly, in *Leaf Tobacco*, the Exporters alleged economic injuries resulting from increased competition.<sup>74</sup> In both *Data Processing* and *Leaf Tobacco*, new competition arose because of agency action.<sup>75</sup> The Exporters asserted that the CCC's action violated statutory provisions, and caused injury to an interest that fell within the zone of interests Congress intended to protect in the CCC Act and the 1949 Act.<sup>76</sup> As in *Data Processing*, the Exporters could not invoke a common law right against injury due to increased competition, since no such right existed in the American legal system.<sup>77</sup> Rather, the Exporters invoked an alleged right created by statute.<sup>78</sup> Indeed, the primary difference between *Data Processing* and *Leaf Tobacco* is that application of the zone of interests test provided standing to the Association of Data Processers, while denying standing to the Exporters.<sup>79</sup> The Fourth Circuit's analysis of the relevant legislative history in *Leaf Tobacco*, however, suggests that different results obtained from application of the zone of interests test do not necessarily indicate inconsistency.<sup>80</sup>

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was not a legally protected interest. *Id.* at 449 n.11; see *Railroad Co. v. Ellerman*, 105 U.S. 166, 174 (1881) (no common-law right against lawful competition). The United States Supreme Court extended the 1882 rule to cover administrative actions in 1940. Note, *supra* note 4, at 449 n.11; see *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 125 (1940) (no common-law right against lawful competition resulting from administrative action).

70. 397 U.S. at 158.

71. See *id.* at 152 (economic harm due to increased competition constitutes injury-in-fact).

72. *Id.* at 156.

73. *Id.* at 152.

74. See *supra* notes 24-25 and accompanying text (discussing Exporters' claim that new USDA foreign export policy created economic injury through increased competition).

75. See *supra* note 66 and accompanying text (discussing *Data Processing* decision of Comptroller of Currency to permit banks to engage in non-banking activities); *supra* note 23 and accompanying text (discussing USDA's decision to allow Cooperative to sell tobacco to foreign buyers, challenged in *Leaf Tobacco*).

76. 749 F.2d at 1110.

77. See *supra* note 69 (discussing Supreme Court's adoption of English common-law rule that damages caused by lawful competition are not legally protected interest).

78. 749 F.2d at 1110.

79. Compare *Data Processing*, 397 U.S. at 158 (under zone of interests test claimants have standing to sue in competitor suit) with *Leaf Tobacco*, 749 F.2d at 1108 (claimants lack standing to sue in competitor suit for failure to satisfy zone of interests test).

80. 749 F.2d at 1115. The *Leaf Tobacco* court did not consider the *Leaf Tobacco* result inconsistent with *Data Processing*. *Id.* The *Leaf Tobacco* court held that the legislative histories

Analysis of the legislative intent behind both the CCC Act and the 1949 Act supports the Fourth Circuit's conclusion that the Exporters' economic interest in avoiding increased competition is not arguably within the zone of interests that Congress intended to protect under either the CCC Act or the 1949 Act.<sup>81</sup> Congress intended the CCC Act to stabilize farm income and prices<sup>82</sup> and to assure that the income of producers of nonessential products, such as tobacco, would be comparable to the income of producers of basic items.<sup>83</sup> Previously existing legislation protected the income of basic product producers through similar price support systems.<sup>84</sup> In addition, Congress established the CCC Act to maintain the health of America's agricultural economy.<sup>85</sup> Consequently, the CCC Act promotes the interests of American farmers by providing economic stability of income levels. Commodity brokers, such as the Exporters, are not express or implied beneficiaries of the CCC program. Therefore, to allow the Exporters to challenge CCC policy would extend the privileges of the CCC benefits to parties whom Congress did not intend to protect.

Similarly, Congress enacted the 1949 Act to establish farm income and prices.<sup>86</sup> Congress intended to extend the World War II practice of providing price supports as production incentives into the peacetime economy.<sup>87</sup> The report of the Senate Committee on Agriculture and Forestry observed that agency officials responsible for acquiring commodities for the government under the 1949 Act should also control the disposal of the commodities.<sup>88</sup> Congress, therefore, intended that the CCC, as the manager of the program through which the USDA acquired tobacco, should have power and discretion to provide for the disposition of the tobacco crop. Similarly, Congress

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of the CCC Act and 1949 Act clearly indicate that the Exporters interests were not within zone of congressionally protected interests. 749 F.2d at 1115. In *Data Processing*, legislative history indicated that petitioner's interests were arguably within the zone of congressionally protected interests in the Bank Services Corporation Act. *Data Processing*, 397 U.S. at 151; see 12 U.S.C. § 1864 (1982) (prohibiting banks from engaging in nonbanking activity).

81. See *infra* notes 81-91 and accompanying text (analyzing legislative histories of CCC Act and 1949 Act).

82. See S. REP. NO. 1022, 80th Cong. 2d Sess., 1, 3 (1948) (CCC Act's purpose is to stabilize farm economy and support farm income), *reprinted in* 1948 U.S. CODE CONG. & AD. NEWS 2138, 2141.

83. See S. REP. NO. 1022, 80th Cong. 2d Sess., 1, 3 (1948) (Act's purpose is to assure nonessential product income is comparable to essential product income), *reprinted in* 1948 U.S. CODE CONG. & AD. NEWS 2138, 2141 (1948).

84. *Id.*

85. See *id.* at 2151 (CCC Act's purpose is to maintain healthy farm economy).

86. See *infra* notes 87-91 and accompanying text (discussing legislative history of 1949 Act).

87. See S. REP. NO. 1091, 81st Cong. 1st Sess. 1, 2 (1949) *reprinted in* 1949 U.S. CODE CONG. & AD. NEWS 2407, 2408 (1949 Act's intent is to extend wartime price supports as production incentives in peacetime economy).

88. See S. REP. NO. 1022, 80th Cong. 2d Sess. at 3 (1948), (persons charged with programs through which agencies acquire commodities have discretion as to disposition of commodities), *reprinted in* 1948 U.S. CODE CONG. & AD. NEWS, at 2414.

enacted the 1949 Act primarily for the benefit of agricultural producers.<sup>89</sup> Congress explained that agencies like the CCC should have the power to provide for disposal of commodities at the agency's discretion.<sup>90</sup> Consequently, the Exporters' interests as commodity brokers are not arguably within the zone of interests that Congress intended to protect under the 1949 Act. The legislative history and statutory language of the CCC Act and the 1949 Act, therefore, indicate that Congress did not intend to protect the Exporters from competition in the foreign tobacco market.<sup>91</sup> In contrast, the legislative history and statutory language of the Act upon which the petitioners in *Data Processing* relied did protect the petitioners' interests.<sup>92</sup>

In *Leaf Tobacco*, the Fourth Circuit properly applied the zone of interests test to deny standing to the Exporters.<sup>93</sup> The Fourth Circuit recognized that the Supreme Court created the zone of interests test as part of a liberalization of standing requirements.<sup>94</sup> Nevertheless, the *Leaf Tobacco* decision serves notice to Fourth Circuit attorneys that the relaxation of standing requirements is not unlimited.<sup>95</sup> Even the flexible standard that complainant arguably must be within the zone of statutorily protected interests means that some claimants will not satisfy the zone of interests test.<sup>96</sup> Consequently, Fourth Circuit claimants seeking to challenge agency action will have standing to adjudicate the merits of the claim only upon a clear and unambiguous demonstration that the language and legislative history of the statute upon which claimants base their claim arguably protects claimants' interests.<sup>97</sup>

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89. *Id.*

90. *Id.*

91. *See supra* notes 81-90 and accompanying text (discussing how legislative history of 1949 Act and CCC Act do not protect Exporters' interests in *Leaf Tobacco*).

92. *See supra* notes 65-72 and accompanying text (discussing legislative history and analysis in *Data Processing*).

93. *See supra* notes 32-37, 64-91 and accompanying text (discussing support for *Leaf Tobacco* court's denial of standing for failure to satisfy zone of interests test).

94. *See supra* note 39 and accompanying text (discussing trend to enlarge class of parties with standing).

95. *See supra* note 40 and accompanying text (discussing that proper application of standing tests must result in preclusion of some parties from litigation of claims).

96. *See id.*

97. *See supra* notes 3-5, 64-91 and accompanying text (discussing bases supporting Fourth Circuit's dismissal of Exporters' claims in *Leaf Tobacco* for lack of standing).