

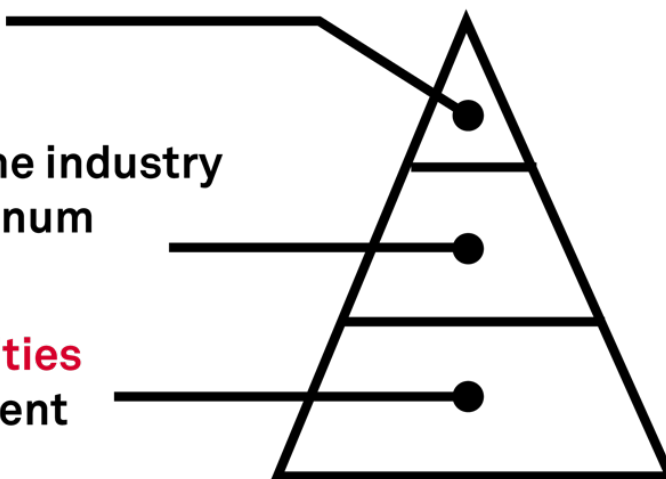
The APEX Act: Built on a Pyramid of False Claims

The APEX Act is not needed.

Built on a claim the CFTC has **already refuted**

Represents an effort by one industry to lower the price of aluminum through **political pressure**

Risks **disrupting commodities** markets through government intervention on pricing



In early 2018, the United States imposed a 10% tariff on aluminum imports. Prices rose, but subsequently reached historic lows in early 2020.

Seeing the cost of aluminum cans increase in response to the tariff, beer industry leaders began an effort to lower the price of aluminum through "government intervention," claiming the Midwest Premium is "artificially inflated" (Peter Coors op-ed in the WSJ).

These efforts peaked with the introduction of the APEX Act in the 116th Congress. Proponents of the APEX Act claimed it was needed "to equip the CFTC" with the authority "to investigate pricing irregularities" (Rep. Ken Buck press releases). In fact, the bill gave the CFTC unprecedented and unrestricted authority intervene in aluminum pricing.

The bill was so flawed, that its text was entirely changed in subsequent versions to give the CFTC oversight authority that it already has, rendering it wholly unnecessary.

The APEX Act is built on a claim the CFTC has already refuted — in testimony to Congress: CFTC has ability to “investigate ... fraud or manipulation.”

For years, beer industry leaders have claimed to see “pricing irregularities” in the Midwest Premium price assessment reported by S&P Global Commodity Insights (CI), which they say demonstrate it is being “artificially inflated,” yet have failed to provide any evidence of incorrect pricing information or inappropriate behavior by Commodity Insights.

CFTC Chairman Rostin Benham has said the agency has the ability to “investigate and to identify any abnormalities or any issues related to fraud or manipulation” in aluminum markets.

S&P Global CI is a neutral and independent information provider with no financial stake in whether the price of aluminum or any other commodity goes up or down.

All pricing information that S&P Global CI relies on in making its price assessments is reported to the market throughout the day to see, validate, and comment on.

Use of a price assessment is voluntary, and market participants can choose if they want to use a price assessment for the Midwest Premium from S&P Global CI, or one of its several competitors.

The APEX Act is potentially disruptive to commodities markets through unprecedented government authority over commodity pricing.

Commodity prices (like for aluminum) are determined between buyers and sellers of a commodity in transactions that occur out of sight.

S&P Global CI, like other information providers, sheds light on these deals as an independent third-party reporting what happened.

- Market participants share this information with S&P Global CI voluntarily to create a more transparent and efficient market.

According to CFTC Chairman Benham, if a regulator were to “come into the scheme, that voluntary service [price reporting] could easily go away and then where are we left, potentially without a benchmark provider.”

The APEX Act is not needed because the CFTC already has the authority to oversee commodities markets, including aluminum, and investigate any “pricing irregularities,” “artificially inflated” prices, or manipulation of the market.

CFTC Chairman Benham confirmed this existing authority to Congress — testifying in 2022 that the agency has authority over commodity markets when there is “fraud and manipulation” — and that the APEX Act would grant the CFTC “pretty unique authority.”

The APEX Act is an effort by one industry to use political influence to lower the price of aluminum through “government intervention” following increased aluminum costs from tariffs and import quotas.

The beer industry, at times, has faced increased costs due to aluminum tariffs and quotas.

The 10% tariff on pure (or “primary”) aluminum resulted in about a 10% increase in the price of aluminum in the United States because the U.S. imports about 90% of its aluminum needs.

- This price has continued to rise and fall following the lifting of tariffs on Canada and Mexico and the implementation of quotas on Canadian exports — still leaving about 22% of unwrought aluminum imports subject to the tariff and some 82% of P1020 imports (from both Canada and Argentina) subject to possible quotas.

After first pressuring the messenger (in this case Commodity Insights) through false claims of manipulation, beer industry leaders are now advocating for the APEX Act to give unrestricted government authority over aluminum pricing in both physical and derivatives markets, which they can then hope to influence to their benefit.

- As Pete Coors said in an op-ed, after failing to negotiate their preferred price for cans and can sheet — stating suppliers “refused” to provide “better rates” — they now believe “government intervention” is “necessary.”