

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN MICROPERFORATED  
PACKAGING CONTAINING FRESH  
PRODUCE**

**Inv. No. 337-TA-1096**

**NOTICE OF INSTITUTION OF INVESTIGATION**

Institution of Investigation pursuant to 19 U.S.C.1337

**AGENCY:** U.S. International Trade Commission

**ACTION:** Notice

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 13, 2017, under section 337 of the Tariff Act of 1930, as amended, on behalf of Windham Packaging LLC of Windham, New Hampshire. On December 4, 2017 Complainant requested an extension of time until January 2, 2018 to file supplemental material, and the request was granted December 7, 2017. EDIS Doc. IDs 630561 (Request) and 631033 (Letter granting request). On January 2, 2018 Complainant requested a second extension of time until January 16, 2018 to file supplemental materials. EDIS Doc. ID 632797. An amended complaint was filed January 3, 2018. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microperforated packaging containing fresh produce by reason of infringement of certain claims of U.S. Patent No. 7,083,837 (“ the ’837 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The amended complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205-1802.

**SUPPLEMENTARY INFORMATION:**

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10 (2017).

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on January 16, 2018, **ORDERED THAT** –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microperforated packaging containing fresh produce by reason of infringement of one or more of claims 1-6, 11, and 13, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Windham Packaging, LLC  
18 Wilson Road  
Windham, NH 03087

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Alpine Fresh, Inc.  
9300 NW 58<sup>th</sup> Street, Suite 201  
Miami, FL 33178

Apio, Inc.  
4575 W Main Street  
Guadalupe, CA 93434

B&G Foods North America, Inc.  
Four Gatehall Drive  
Parsippany, NJ 07054

Glory Foods, Inc.  
901 Oak Street  
Columbus, OH 43205

Taylor Farms California, Inc.  
947 B Blanco Circle  
Salinas, CA 93901

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: January 17, 2018