

Proposed Amendments to Rule 80

Rule 80 is amended as follows:

Rule 80. Papers, Exhibits, and other Material

* * * * *

(h) Physical Samples

(1) An identical copy of any physical item or sample filed with or transmitted to the Court by a party, except for items transmitted pursuant to USCIT R. 73.1, must be served upon the other parties except in instances where:

(A) The item or sample is unique and an identical or substantially identical copy of the item or sample cannot be served upon the other parties;

(B) An identical or substantially identical copy of the item or sample was served during discovery;

(C) The parties have agreed that service is not necessary; or

(D) By order of the court.

(2) When a sample is filed under this rule with the court, a completed Certification of Filing and Service of Physical Sample substantially in conformity with Form 23 in the Appendix of Forms also must be filed.

* * * * *

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Dec. 29, 1982, eff. Jan. 1, 1983; July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009; _____, 2016, eff. _____, 2016.)

Advisory Committee Note

Subsection (h) was added because providing physical samples to the court in tariff classification cases, particularly in the course of motion practice for cases brought pursuant to 28 U.S.C. § 1581(a), is somewhat routine. In some past cases, a physical sample filed in conjunction with a motion and provided to the Court has not been served on opposing parties, because there was no rule providing for it. Accordingly, there was no means for opposing counsel to independently examine what was provided to the Court absent physically visiting the courthouse. Given the national jurisdiction of the U.S. Court of International Trade, inspection at the courthouse may be cost prohibitive or problematic for counsel not practicing in the immediate vicinity of New York, New York. This rule, along with its corresponding new Form 23, is intended to address this issue.