

nomination of Vessel FOB contracts

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In the Free on Board contract "FOB", the seller's duty is to ensure that the goods conforming to the contract are put onboard the vessel nominated by the buyer at the port of loading by the date or within the shipment period stipulated in the contract, and that the buyer is furnished with such documents as will enable him to take delivery from the carrier. The buyer for his part must procure space on the vessel and nominate to the seller in sufficient time to enable the seller to dispatch the goods to the docks and have them shipped on board the vessel.

The FOB contract imposes many duties upon the buyer. This article will briefly examine one duty which is the nomination of the vessel including the buyer's ability to nominate a substitute vessel.

The nomination of the vessel duty is very crucial under the FOB contract because it is a condition precedent to the obligation of the seller to load the goods. Therefore, if the buyer does not nominate a vessel within the stipulated time, the buyer is then in breach of the contract and the seller will be accordingly entitled for damages.

The time of nomination is of the essence, and failure to nominate within this entitles the seller to treat the contract as repudiated and claim damages. It is the duty of the FOB buyer to procure a space on a vessel suitable for the purchased goods and advise the seller with the same. The buyer must advise the seller with the vessel name, particulars and the date of arrival to the port of loading. The buyer must also have agreed with the carrier on an appropriate loading time suitable for the purchased goods and coherent with the loading circumstances at the relevant port of loading. Of course, the nomination must be capable of proving effective and must not be artificial.

Unless stated otherwise in the contract and the nature of the cargo permits it, the buyer is entitled to make a substitute nomination in due time and the substitute vessel proves to be an effective vessel. However, the substitute nomination must itself be contractually valid. In addition to this, the original nomination remains contractually binding if the substitute nomination proves ineffective. As consequence, the buyer can rely on the events of frustration or force majeure to nominate a substitute vessel and to vary his liabilities as per the contract.

The FOB contract buyer may usually nominate a new vessel on many grounds, for instance, the vessel originally nominated will not be able to receive the goods due to a breakdown. Such nomination should be of course, a valid nomination. The buyer will be responsible towards the seller for any extra cost incurred by the seller due to the new nomination. On the other hand, it could be argued that the buyer is not entitled to make a substitute only where he has made some representation, express or implied that he will not exercise his right of substitution and the seller has acted in reliance on such representation.