
Big Bottles: Ending the Prohibition

An imperial of Fonseca 1985 has been opened for the splendid occasion of CUTwC's 60th Anniversary. Perhaps some might be interested in the story of its acquisition.

In 2007 there was posted, in an online forum about port, a picture of bottles in a cellar in Vila Nova de Gaia (the city where the Douro river meets the Atlantic). The pictured bottles were purported to be double-magnums of Fonseca 1985, at least 27 of them. Desire! Later I learnt that they were actually imperials (= quadruple magnums), which didn't lessen the desire. I knew that these would be just right for the 60th Anniversary.

Fonseca and the cellar are owned by The Fladgate Partnership, the CEO being Adrian Bridge. We start with a letter to him dated 20th August 2007:

Hidden in bin 116, in your personal cellars in Vila Nova de Gaia, are (at least!) twenty-seven double magnums of Fonseca 1985. I am writing to beg to be allowed to buy four or five of them—perhaps, before saying more, this letter would work better if you were told why.

The modern game of Tiddlywinks was invented in January 1955 in Cambridge, in England. The foundation of the Cambridge University Tiddlywinks Club (CUTwC) dates from then, and in January or early February of every year the Club has an Annual Dinner to give thanks to the Founders. The 60th Anniversary Dinner will be in early 2015, and as I usually provide the port for the Dinner, appropriate bottles are already being gathered.

... It is planned that the bulk of the port will be 1985, the year in which the Club was thirty, being half of 2015's sixty. And what could be better than double magnums of Fonseca, for taste and for dramatic affect?

... please, is there any combination of love, money, an invitation to the Dinner, or even a promise of secrecy, that would persuade you to part with some of those precious double magnums? Please sir?

Adrian replied on 26th September 2007:

... Fonseca does not have any double magnums. We do have some imperials but only 12 and these cannot be sold under IVDP regulation. ... Magnums are the largest format our regulator allowed to sell — the imperials are destined for tastings.

The IVDP is the *Instituto dos Vinhos do Douro e Porto*, the notoriously bureaucratic regulatory body for Port. And in January 2008 a letter was sent to its president, Cc people at the *Ministro da Economia e da Inovação* and at the *Ministro da Agricultura*. Some of the major Port companies were Bcc'd. The letter was in two columns, the left in English, the right a translation into Portuguese. Yes, it contained some minor errors of fact—at this stage I was learning.

The IVDP currently forbids the port houses from selling port in bottles larger than a magnum. Please, why? Other wine regions don't impose similar constraints on their wine producers.

On 28th February 2007, in New York, Sotheby's sold one Nebuchadnezzar of 2000 Mouton Rothschild for US \$100,000. That is \$5000 per bottle. Mouton Rothschild make good wine, but so do the best port houses. Surely the best port names would like to have sold their product at a hammer price of €3850 per bottle.

[Omitting some economic comments aimed at the *Ministro da Economia e da Inovação*]

... please expand the list of allowed bottles sizes to include the following:

- 2¼ litres (tregnum);
- 3 litres (double-magnum);
- 4½ litres (half a case);
- 6, 9, 12, 15, or 18 litres;
- Any size larger than 18 litres, however big;
- Any bottle ≥ 2¼ litres that was bottled before this change in the rules (so the port producers may profit from the old large bottles in their cellars, some of which I want to buy).

Of course, these allowed sizes would not be compulsory. If any particular house wants to bottle only the ¾-litre or 1½-litre sizes, then that would be perfectly fine. But if a house wants to sell a larger size, and a customer wants to buy, that would also be perfectly fine.

And yes, there are bottles sitting in cellars in Vila Nova de Gaia that I want to buy. I want to pay money; producers want to take my money; and for no good reason at all the IVDP says that this is not allowed. Please, either tell me why (and tell it to the Ministro da Economia e da Inovação), or let me buy what Portugal wants to sell.

The IVDP president replied on St Valentine's Day 2008:

Relating to the European Union Market, we would like to take your attention to the fact that the bottles sizes, between 5 ml and 10 l, must comply with the Council Directive of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of the certain prepackaged liquids (75/106/EEC), last amended by the Council Directive 89/676/EEC of 21 December 1989. According to this Directive, and for the liqueur wines, the largest bottle allowed is 5 litres. This Directive also establishes the several sizes allowed below 5 litres.

... However article 8 of the IVDP regulation n.º 23/2006 ... determines that the largest bottle allowed is 150 centilitres, except for Aged tawnies, Crusted, Late Bottled Vintage, Single Year Vintage and Classic Vintage Ports for which the largest bottle allowed is 300 centilitres. It also determines that in certain cases, duly justified, namely for promotional purposes, IVDP may allow the use of larger bottles.

We must underline that these rules were approved by a Council that is composed by representatives of the Port wine Growers and Port houses.

However, we must underline that the use of very large bottles may be dangerous for the protection of this prestigious appellation of origin, as it may allow the practice of frauds.

Splendid: the field of battle had been chosen, and was to be 75/106/EEC. Even though I am not a lawyer, I can read. On 24th February 2008:

Thank you very much for your letter of 14th February, which helpfully details the IVDP's stance and the reasoning behind it, and even does so in English. Before tackling the substance of your letter, I happily accede to your request: yes, please do send a copy of my letters (the previous one, and this one) to the Port Wine Shippers Association, and also to the IVDP's legal advisers.

Your letter raises four points that are discussed in detail below. In summary:

1. Even if the IVDP's understanding of 75/106/EEC is correct, the IVDP's rules should be as unrestrictive as possible.
2. The IVDP's understanding of 75/106/EEC is incorrect: port actually lies within 1.(a) of 75/106/EEC, and hence allowed bottle sizes are, in litres, 0.10, ¼, 0.187, □, ½, ¾, 1, 1½, 2, 3, 4, 5, 6, 8, 9, and anything ≥10L.
3. Even if my reading of the rules is wrong, it doesn't matter: Brussels wants the rules to be as liberal as possible (Lisbon Agenda 2000), so will not criticise a more generous reading.
4. Even if that is wrong, there are other loopholes in EU rules, in which case the IVDP should be explicitly permitting the use of those loopholes.

...

Your letter also says:

However, we must underline that the use of very large bottles may be dangerous for the protection of this prestigious appellation of origin, as it may allow the practice of frauds.

This claim appears to be nonsensical. Forgeries happen to below-the-radar stuff. If a house bottled only 24 imperials of its 2007, an auctioneer can easily check provenance. And if Château Mouton Rothschild 2000 can be bottled in 5L and 15L sizes (and sold at an eye-watering price in New York), the more restrictive rules clearly aren't needed "for the protection of this prestigious appellation".

Omitting detailed technical tiresome arguing about which rules do and don't apply to port...

Hence, in the Common Customs Tariff, port really isn't 22.05. Hence in 75/106/EEC port is not 1.(d); port is 1.(a). Hence EU rules allow port to be bottled 0.10L, 0.25L, 0.375L, 0.50L, 0.75L, 1L, 1.5L, 2L, 3L, 5L, 6L, 9L, 10L, 0.187L, 4L, and 8L (in the order given in 75/106/EEC (as amended)).

Re-reading six years later, perhaps I should have restrained my sense of mischief. My letter continued:

4. Even if your lawyers are unnecessarily paranoid, there are other loopholes.

75/106/EEC (as amended) doesn't actually regulate bottle sizes, though it might look like it does. It regulates labels, saying that they can have only certain values, and that the value must not be larger than the actual volume (with some small statistical inaccuracy). So it would be perfectly legal to put a 500cl label on a 600cl bottle, and add to the back label words such as:

This bottle, before being filled with port, was able to hold 600cl of liquid. EU regulations (75/106/EEC, including amendments up to 89/676/EEC) do not allow a bottle of port to be labelled as containing 600cl;

hence the inaccurate “500cl” written on the front label. But we are confident that customers understand: before being filled with port this bottle could hold 600cl of liquid.

Nothing in 75/106/EEC prevents the labelling and sale of such a ‘pseudo-Imperial’. And, in the Eurosceptic British market, such a wording would please many customers. The IVDP’s website should blatantly describe this practice as a “necessary circumvention of silly bureaucratic rules”.

In short, if the IVDP’s lawyers insist that port is 75/106/EEC 1.(d), the IVDP should then explicitly allow and facilitate such pseudo-labelling.

The letter ended optimistically:

This letter contains an interpretation of a Brussels Directive. I’m not a lawyer—otherwise I would be charging you thousands of euro for this letter. Instead it is free. But if you act on it, as you should, please encourage the port houses to believe that they have a moral obligation to sell me some interesting bottles at a price somewhere between fair and generous. UK delivery, despite the US postal address. Thank you.

I confess to having enjoyed writing the letter, both the technical legal interpretations and the cheekier sections.

The IVDP’s reply was dated the last day of March 2008.

... Going directly to your comments, we will not make any observations concerning points 3 and 4 of your letter.

Oh. That’s a shame. It could have been so much more fun.

There followed two paragraphs re-stating a wrong interpretation of 75/106/EEC, and re-stating that the matter had been decided. It was just like a civil servant using many words to express a two-word reply, imperative verb then preposition. This was going badly.

However, I had included the *Ministro da Economia e da Inovação* in this correspondence, which had sent a cursory response. So:

... Thank you for your brief note in response to my letters of 22nd January and 24th February. Please could I ask you for a tiny additional thing: a single phone call.

Most ways of improving the efficiency of the Portuguese economy would displease somebody. A union, a special interest group, a *de facto* cartel, somebody would strike and protest. Even if there would be long-term gains for the economy, the short-term price, political or economic, might be too high. But I am asking for a regulatory change that would cause no strikes. No protests. No bad headlines. No political cost. No economic cost. And in return for not paying any costs, Portuguese exports would increase, even if only slightly. That must be pleasing to the Ministério da Economia e da Inovação.

I have worked in the British public sector, where there were some people who wanted to do it right. And there were others who wanted never to admit that it was being done wrongly — even if that never-admit behaviour meant that it continued to be done wrongly. I was very unimpressed. If the IVDP is of the former type, great, my arguments alone will cause the rules to change. No problem. But if the IVDP is of the latter type, never admitting to being wrong, then the arguments will be ignored. I don’t know which type is the IVDP, but if they are the wrong type, a quick phone call from the Ministério da Economia e da Inovação to the IVDP might cause a rethink.

I am imagining a British civil servant firmly asking questions such as the following. They might need to be converted to a Portuguese style, but, please, any similar conversation would work.

We have received a copy of a letter about the regulation of port wine bottle sizes, explaining that port is subject to 75/106/EEC 1.(a) not 1.(d). It is interesting.

Do the port houses have any vintage port in bottles larger than 3 litres?

Are the port houses allowed to sell these large bottles?

If this were Bordeaux rather than port, would they be allowed to sell them?

The letter dated 24th February explains that port, like Bordeaux, is subject to paragraph 1.(a) of the EU directive, not 1.(d). Does your lawyer agree? If not, may we see your lawyer’s opinion?

Of course I am sure there is a good reason for this prohibition, but the Minister wants to know why Bordeaux but not port may be sold in larger bottles, and for lots of money. Please send the MEI a formal letter, either explaining why port may not be sold in bottles larger than 3 litres, or saying that the rule will soon change.

Thank you.

...

It wasn’t friendly to the IVDP, but the gentle possibilities seemed to have failed.

Did the MEI telephone the IVDP? Did the recipient of the call need to change his armour? Nobody told me.

Another attempt—yes, blatantly transparent—was a failure:

20th October 2008

Dear Mr Bridge,

I am writing to learn whether The Fladgate Partnership sells much Fonseca port to Lesotho and Botswana. If your sales are currently small, and our research suggests that they are currently miniscule, would it be possible to become your distributor in these two countries? Both have a growing middle class, and we believe that we would be able sell port during the southern-hemisphere winter—particularly in large formats. Exclusivity of distributorship would not be required.

Naturally The Fladgate Partnership would not want the harassment of handling customs at Maseru and Gaborone airports (each reached via Johannesburg), so the easiest course would be for bottles to be delivered in bond at Heathrow or elsewhere in southern England, allowing us to merge with other shipments and handle the administration. Labelling requirements in Lesotho and Botswana are not at all stringent: it suffices to label as for any English-speaking rich-world country and the authorities will be happy.

...

Yours sincerely,

Julian D. A. Wiseman
Sales Manager (Africa)
The Wiseman Partnership

This might have been the first time that the Maseru gambit had been invoked in an attempt to buy Port for the Dinner. Anyway, and understandably, The Fladgate Partnership chose not to hide behind this sham.

Next there was a meeting with the IVDP, on 25th June 2009, at the start of a trip to Portugal with Port-drinking chums. Originally the meeting was to be with the IVDP's new president but was substituted by the IVDP's lawyer. He and I went through the relevant pages of the Common Customs Tariff, and after half an hour the argument ended. My letter of 9th July 2009 giving "double thanks for my brief trip to the IVDP" included:

First, hurray!, the IVDP's new president does not object to large bottles. I am asking various people in the industry to ask that

the IVDP put before the Conselho Interprofissional a motion to change the rules such that any legal bottle size not exceeding 18 litres is then permitted. In particular, the new rule(s) should allow any of 0.1L, 0.187L, 0.25L, 0.375L, 0.5L, 0.75L, 1L, 1.5L, 2L, 3L, 4L, 5L, 6L, 8L, 9L, 10L, and any size that is both $\geq 10L$ and $\leq 18L$.

This is the full range permitted by 75/106/EEC (with amendments), subject to a no-bulk-export cap of eighteen litres (a Melchior). Even if the wine-makers forget to ask for some of these sizes, please could your motion permit them all?

Second, the trip to the IVDP was itself of great interest. ... You might recall that we discussed the IVDP glasses: if ever there should be a version 2, I'd be more than willing to assist the testers.

Anyway, thank you again for your time, and most of all, your non-disagreement.

And then the battle was won. The rules were changed, and proper-size bottles had become legal. Argument ✓; battle ✓. Hurray! A letter was sent to Adrian, explaining that his concerns of September 2007 had now been fixed, and that now he could legally sell imperials. Please would he do so? His email said something like "No. I do not wish to sell any."

PORTO
Quevedo
QUINTA VALE D'AGODINHO
VINTAGE 2008

Almost all wine is sold absolute: the purchaser may do as the purchaser pleases. This is not so for Quinta Vale D'Agodinho 2008 Vintage Port in 6L Imperials and in 3L double magnums. For these the owner must invite Oscar Quevedo to the opening, giving reasonable notice, and allow him to taste the Port. If the bottle should have a new owner, whether through sale or inheritance or otherwise, the same condition binds the new owner.

If Oscar Quevedo dies and is survived by living descendants, this 'right to be invited' passes to his legal heirs. If he should die without living descendants, this right passes to Julian Wiseman, the author of this contract.

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LOTE N0910

Produzido e engarrafado na propriedade por VINOQUEL - Vinhos Oscar Quevedo, Lda.
S. João da Pesqueira - Douro
Produto de Portugal / Produce of Portugal
Contains sulfites

Engarrafado em 2010 / Bottled in 2010

600cl. 19,5% vol.

Oh. Argument ✓; battle ✓; war ✗. Oh. Not happy.

In April 2011 my Port chums and I tasted a vertical of Fonseca Guimaraens, and it is customary to invite an industry guest. Adrian Bridge paid the price of sitting next to me. At a minimum, the seed was re-planted. And then in November 2013 another letter was sent, starting “Please allow a third and final attempt.” And he did. And he really did.

... I was delighted that you were able to bring the Port Wine Institute into line and that we can now sell imperials.
 ... We own 11 of them and 2015 is the 200th anniversary of the foundation of the house of Fonseca. Young Guimaraens started working for the company in 1821 and moved to the UK in 1822 to sell there. He became owner in 1863.
 You have been persistent and focussed.
 Yes, I will sell you an Imperial of Fonseca 1985. The remaining 10 will be used for various events celebrating our anniversary.
 ... What we can also do is sell some Fonseca magnums ...

And at a very generous price (doffs hat): thank you Mr Bridge. Argument ✓; battle ✓; war ✓. Hurray!

All of which is how the only imperial of Fonseca 1985 not owned by The Fladgate Partnership is at CUTwC’s Sixtieth Anniversary.

No trouble at all.

A draft of this essay was shown to Adrian Bridge, who suggested a postscript showing bottling numbers. That data, and more, are in the table.

So two things have happened. Bottles bigger than three litres have become *de facto* legal. But as importantly, the

Shipper	Brand	Vintage	Double-Mag, 3 l	5 litre	Imperial 6 litre	Salman-azar, 9 l	Balthazar 12 litre
S.F.E.	Dow	2007	✓		✓	✓	✓
S.F.E.	Graham	2007	✓		✓	✓	✓
S.F.E.	Vesuvio	2007	✓		✓	✓	✓
S.F.E.	Warre	2007	✓		✓	✓	✓
Niepoort	Niepoort	2007	✓				
Quevedo	Q.V.D’A.	2008	30		30		
T.F.P.	Croft	2009	100		10		
T.F.P.	Fonseca	2009	300		10		
T.F.P.	Taylor	2009	300		10		
T.F.P.	T.V.V.V.	2009			3		
S.F.E.	Vesuvio	2009	✓		✓	✓	✓
S.F.E.	Warre	2009	✓				
S.F.E.	Ribeira	2009	✓		✓	✓	✓
Niepoort	Niepoort	2009	✓	✓			
S.F.E.	Vesuvio	2010	✓		✓	✓	✓
T.F.P.	Croft	2011	100		10		
T.F.P.	Fonseca	2011	250		25		
T.F.P.	Taylor	2011	450		40		
T.F.P.	T.V.V.V.	2011			10		
Quevedo	Quevedo	2011			60		
S.F.E.	Cockburn	2011	✓				
S.F.E.	Dow	2011	✓		✓		
S.F.E.	Graham	2011	✓		✓		
S.F.E.	Vesuvio	2011	✓		✓		
S.F.E.	Warre	2011	✓		✓		
Niepoort	Niepoort	2011	✓	✓			
Niepoort	N.B.V.V.	2011	✓				
S.F.E.	Malvedos	2012	✓				
S.F.E.	Ribeira	2012	✓		✓		
S.F.E.	Vesuvio	2012	✓		✓		
		Totals:	≥1550	≥2	≥221	≥7	≥7

idea of large bottles has gone from exotic to almost ordinary — for the IVDP, for shippers, and even for some consumers. Before the change double magnums were legal, but very rare. Since the change production of double magnums has become standard, even if not quite yet everybody’s basic home-drinking size.

There was one bonus piece of mischief: the back label of large format Quevedo Quinta Vale D’Agodinho 2008. On the previous page is a picture of its back label, which speaks for itself, legal weaknesses and all. (As yet, no invitations.)

— Julian D. A. Wiseman
 London, January 2015
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