

Plant Variety Protection on a European Scale

15 years Community PVP system

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The Community Plant Variety Rights system

- Characteristics
- Evaluation Community PVP system
- Statistics
- Surrenders



A system for the protection of plant varieties on European scale was established by a Regulation of the European Community in 1994.

Duration of the Community right: 25 years
(30 years for vine, trees and potato varieties).

The Community Plant Variety Office (CPVO) administers the system.

The rights (Community plant variety rights) granted under this system are valid throughout the territory of the 27 Member States of the European Union.



The subject matter of a PVR, a plant variety

A variety' shall be taken to mean a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:

- defined by the expression of the characteristics that results from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
- considered as a unit with regard to its suitability for being
- propagated unchanged.



What is a plant grouping? Not defined in UPOV convention , but in Reg 2100/94

- A plant grouping consists of entire plants or parts of plants as far as such parts are capable of producing entire plants, both referred to hereafter as “variety constituents”.
- *Variety constituents= propagating material?*



Entitlement to protection:

- the breeder: the person who bred or discovered and developed, a variety;
- or his successor in title.



Conditions for granting a plant breeders' right

Criteria to be satisfied, a variety must be :

- NOVEL

- DISTINCT



"DUS"

- UNIFORM

- STABLE



Scope of the right Authorization of breeder required for

- Authorization required from breeder for following acts:
- Production or reproduction (multiplication)
- Conditioning for the purpose of propagation
- Offering for sale
- Selling or marketing
- Exporting
- Importing
- Stocking for any of the above purposes



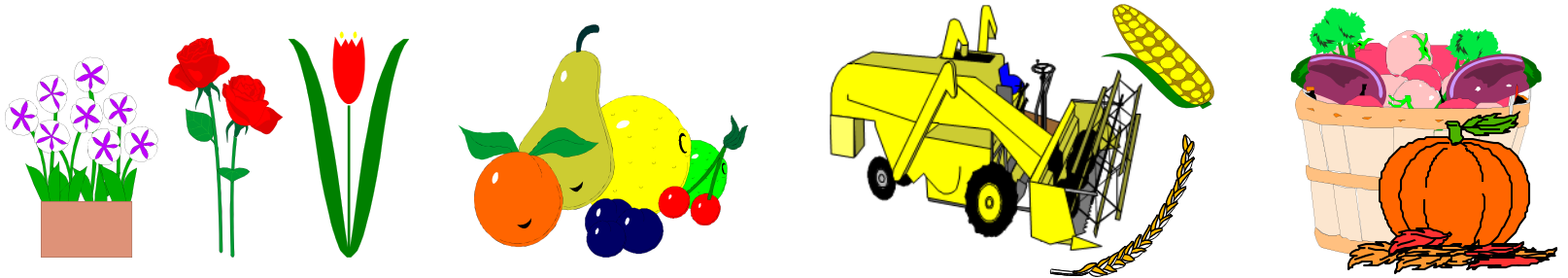
Characteristics

Material covered

- Variety constituents (propagating material?)
- Harvested material, under certain conditions



Harvested material



IF obtained through unauthorized use of
propagating material unless,
reasonable opportunity for breeder
to exercise his right



The right does not extend to

Acts done:

- privately and for non-commercial purposes
- for experimental purposes
- breeding other varieties(breeders' exemption)

Farmer's privilege (optional)



Advantages of the breeders' exemption

- Germplasm sources remain accessible to the community of breeders
- Genetic basis for plant improvement is broadened and is actively conserved
- Variety improvement is enhanced
- Opportunity for all breeders to share in benefits of breeding activities



Why a specific *sui generis* IPR for plant varieties?

- Most new plant varieties do not qualify for patent protection (no inventive step)
- Under the EPC, plant varieties as such are excluded from patent protection



Relationship Patents

Plant Breeders' rights





CPVO

Community Plant Variety Office

Evaluation Community pvp system

Summary of key messages

- The CPVR *acquis* functions well and has met its objectives in aggregate. It strikes a reasonable balance between the interests of breeders, growers and consumers. The CPVR *acquis* incentivizes breeders to invest in research and develop new plant varieties, enabling their exchange for breeding and experimentation.



- The breeders' exemption is the cornerstone of what makes the CPVR *acquis* a useful and effective mechanism for protecting plant varieties. The duration of protection is appropriate and the scope of rights is generally effective.
- Nonetheless, there are some areas of weakness, particularly pertaining to the agriculture exemption and enforcement opportunities for rights' holders.



- The evaluation has identified a number of areas in which the system could be improved. For instance, there are links between the Seed Marketing Directives and the CPVR *acquis* where DUS testing and variety denominations are required for listing and certification, and for plant variety protection. In some cases, these procedures are unnecessarily duplicated.
- A 'one key, several doors' approach, supervised by the Community Plant Variety Office (CPVO), in which only one procedure is used for each purpose, would remedy this duplication.



- Looking ahead, the fact that the EU legislative framework for patents allows for dual protection of patents and plant variety rights is a major concern, particularly as patents become more prevalent in agricultural research. This is due to the lack of a breeders' exemption and limited research exemption for patents.
- Determining whether a plant variety may overlap with a patent can be difficult without sufficient legal and technical expertise. CPVO could provide more information regarding plant-related patents and their implications for particular plant varieties.



- There are no standardized protocols or thresholds to determine essentially derived varieties (EDVs), making disagreements more difficult to resolve.
- CPVO could play a greater role in assisting industry develop standardized approaches to determining EDVs for the most economically important species.



CPVR holders report that European Court of Justice rulings limit their ability to request information from farmers making it more difficult to exercise their right to collect royalties on farm saved seed. Amending the Basic Regulation to obligate growers to answer "yes" or "no" to a request as to whether they have used farm saved seed would relieve the burden on breeders to discover its use.



Phytosanitary risks arise from cultivation of uncertified potatoes. There is a case for amending the Basic Regulation to remove potatoes from the list of species covered by the farm saved seed exemption.



Enforcement is a major concern for rights' holders. There are few courts in Member States with the knowledge required to rule on CPVR cases. More informed decisions on CPVR-related cases and improved resolution of enforcement issues could potentially be provided by having designated competent courts in each Member State and/or an EU-level competent court for CPVR cases.





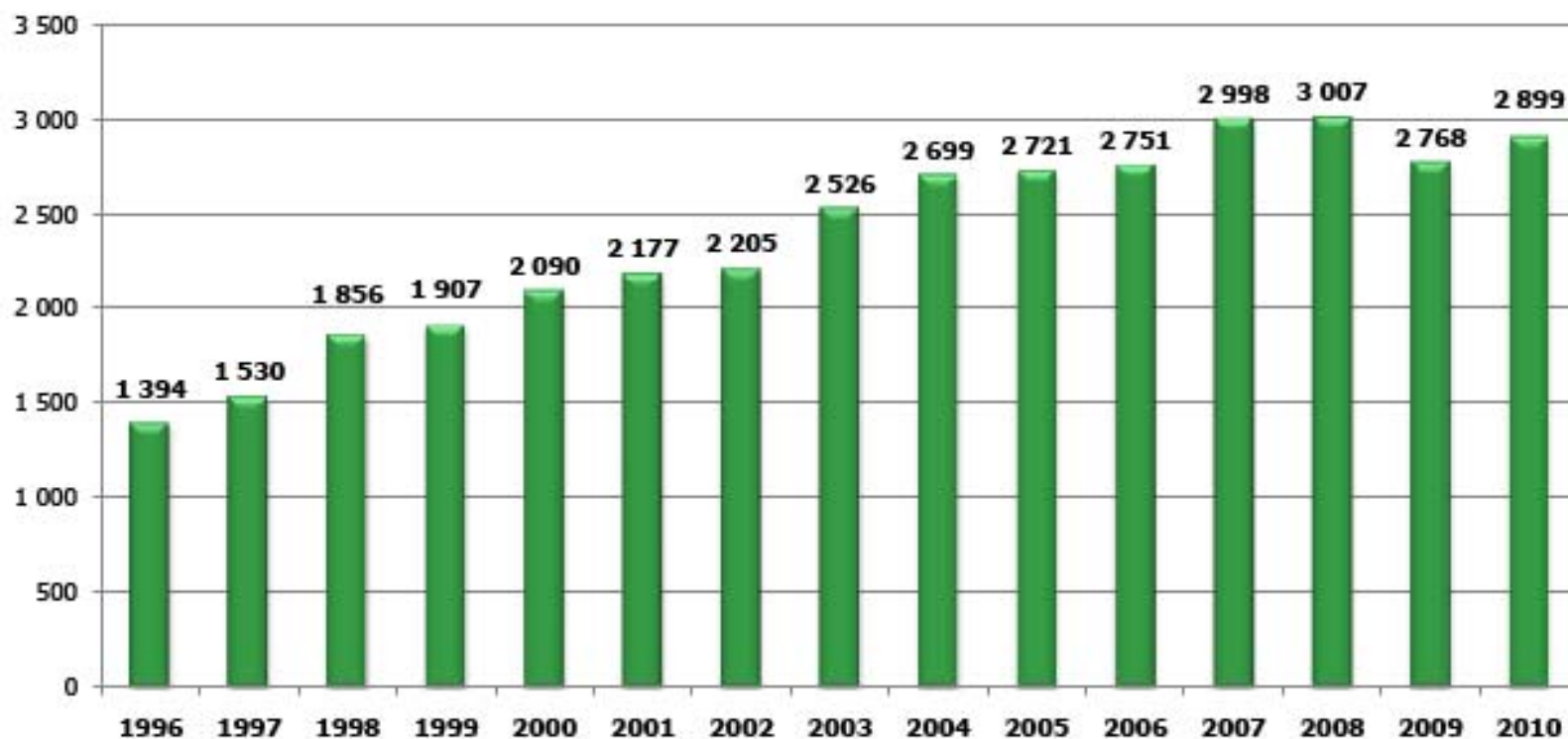
CPVO

Community Plant Variety Office

Statistics

YEAR 2010

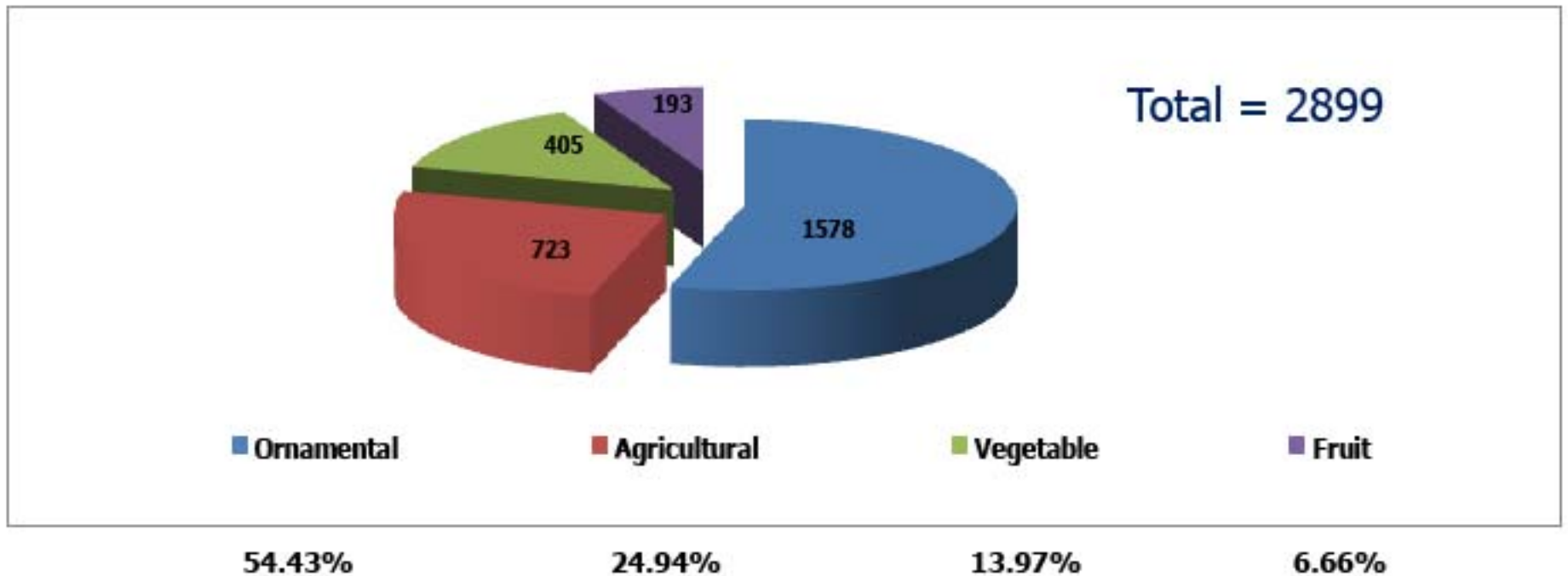
Evolution of annual number of applications received for Community Plant Variety Rights from 01/01/1996 to 31/12/2010



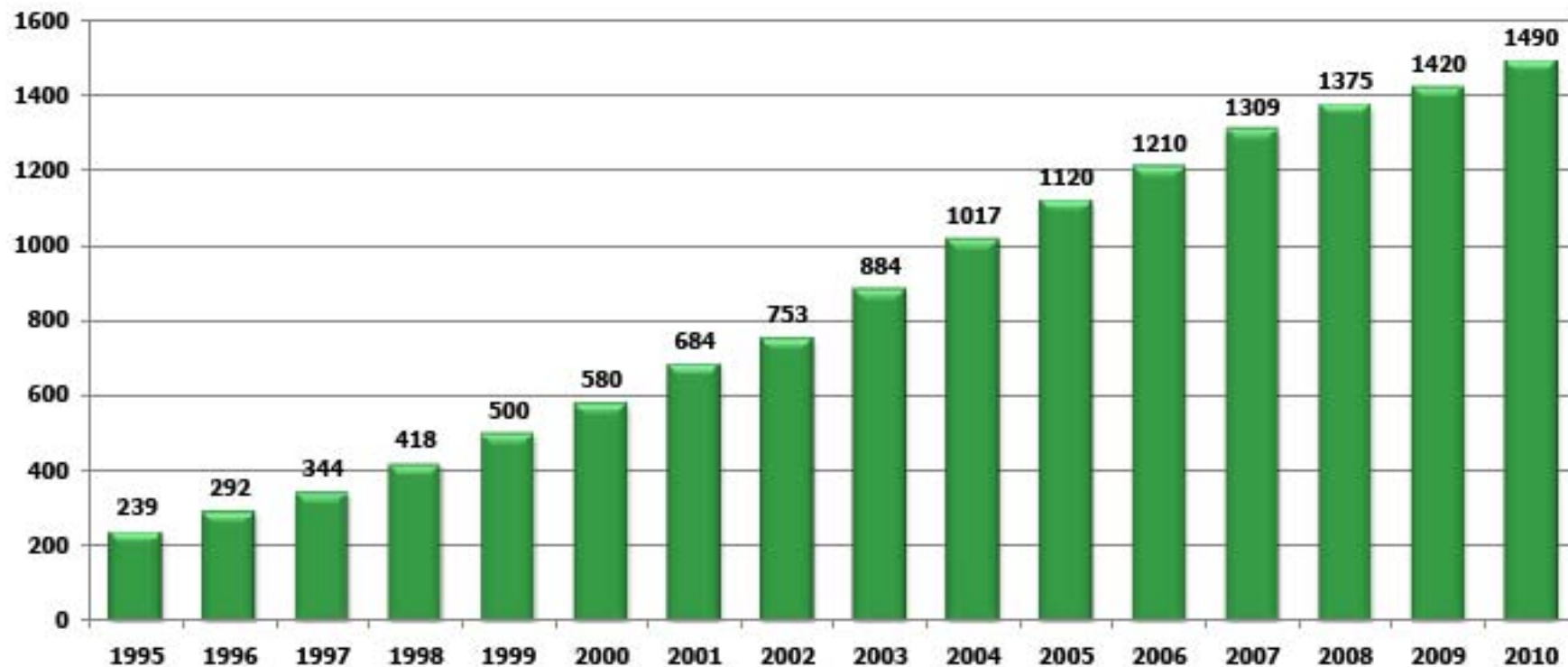
(*) + 3% compared to 2009



Applications received
for Community Plant Variety Rights
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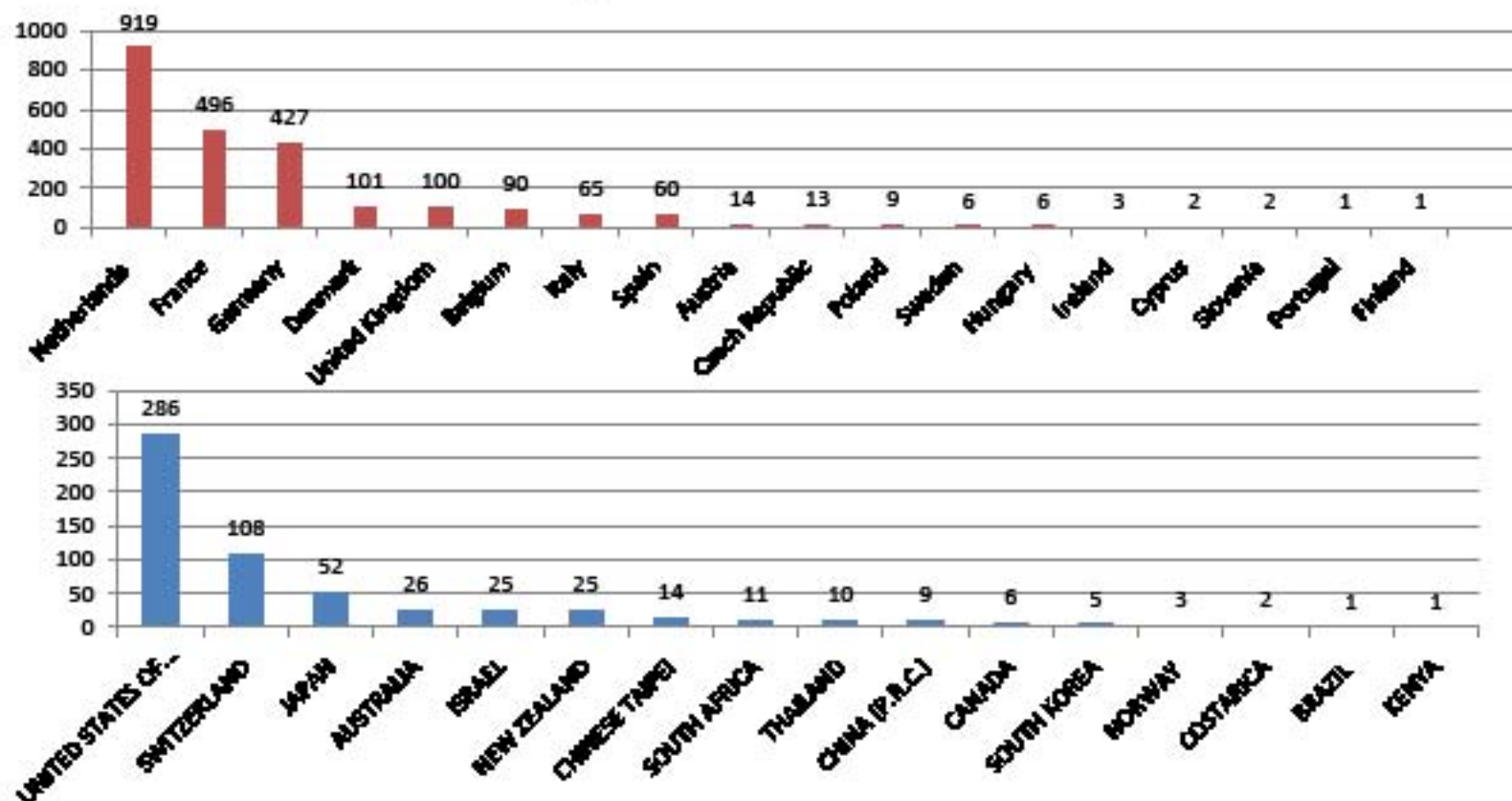
Evolution of the number of species received for Community Plant Variety Rights from 01/01/1996 to 31/01/2010



+ 4.93 % 2010 compared to 2009



Origin of Community Plant Variety Rights applications in 2010



Total 2899



STATISTICS

Trends in surrenders

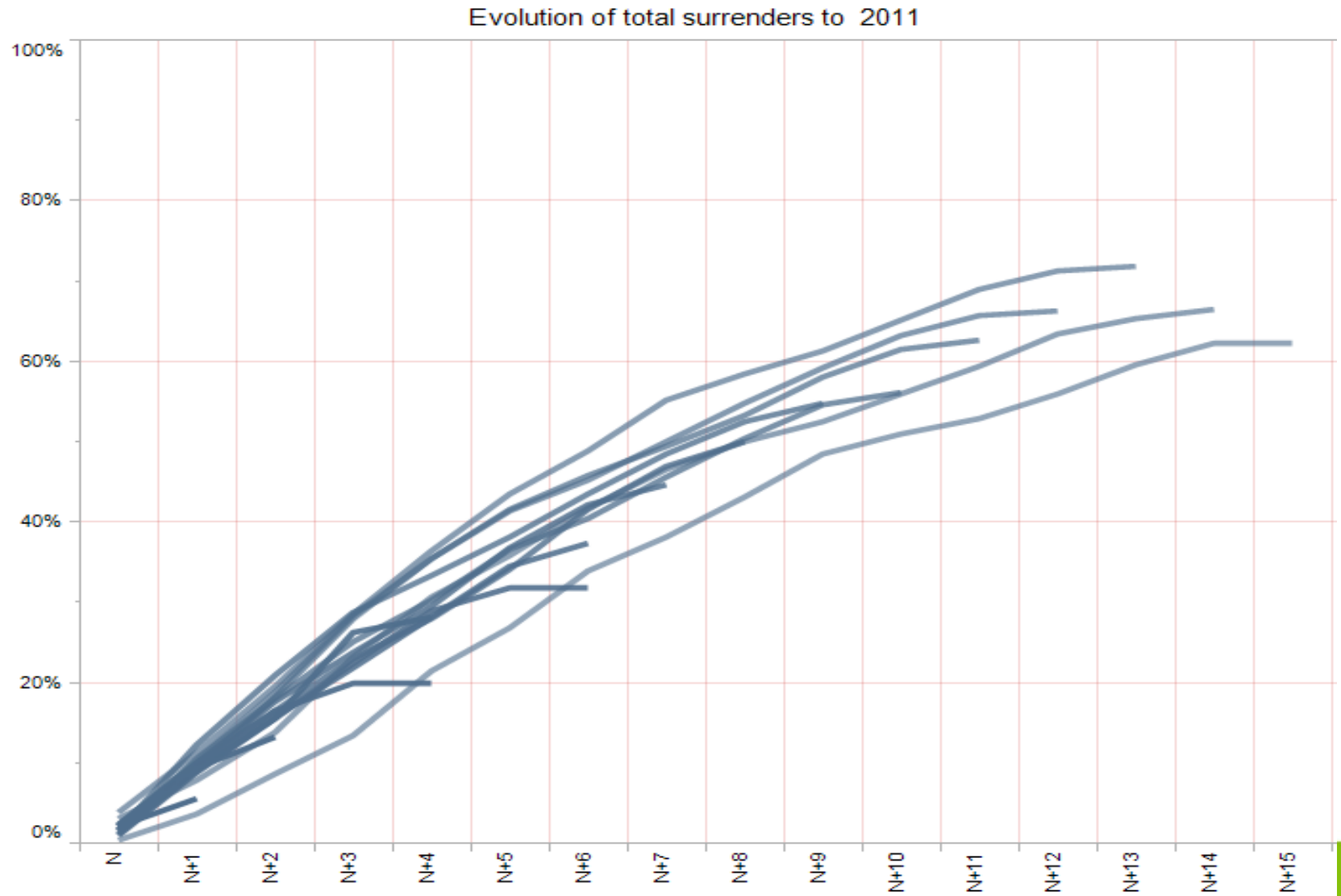


Approach

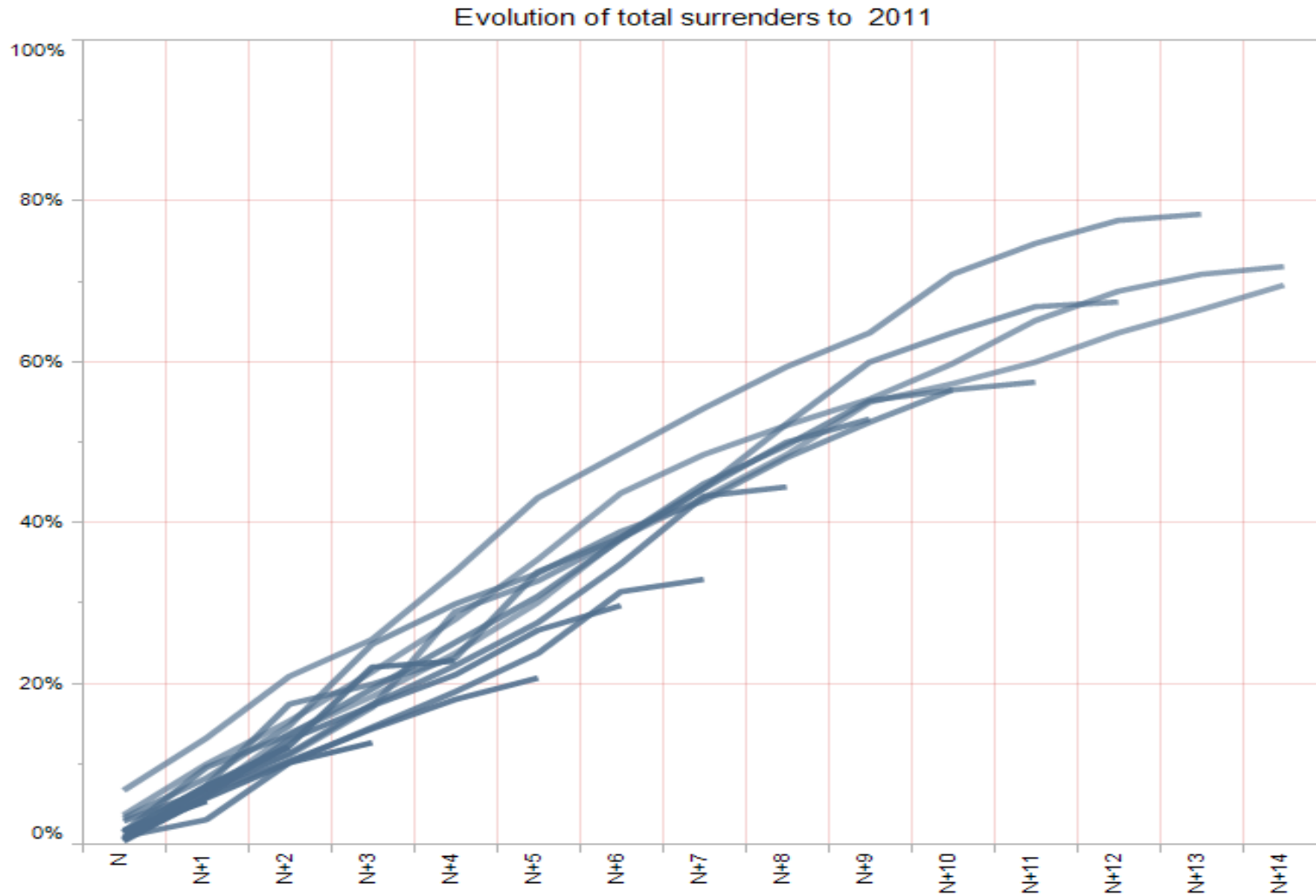
- Analysis by crop
- Graph showing cumulative % surrendered over years n , $n+1$...
- One line per year title granted
- 1996 runs to $n+15$ (2011)



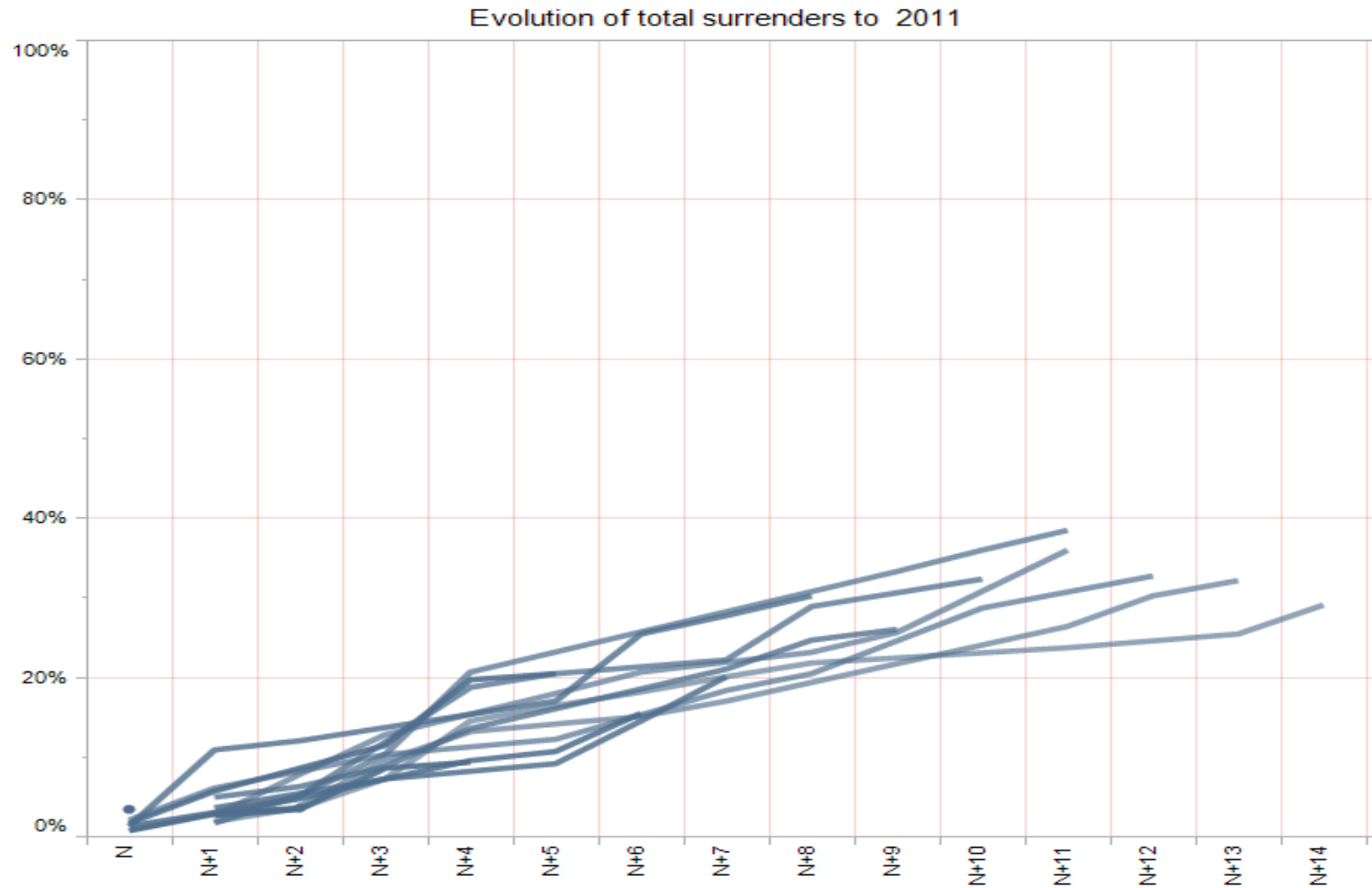
All crops: evolution of surrenders



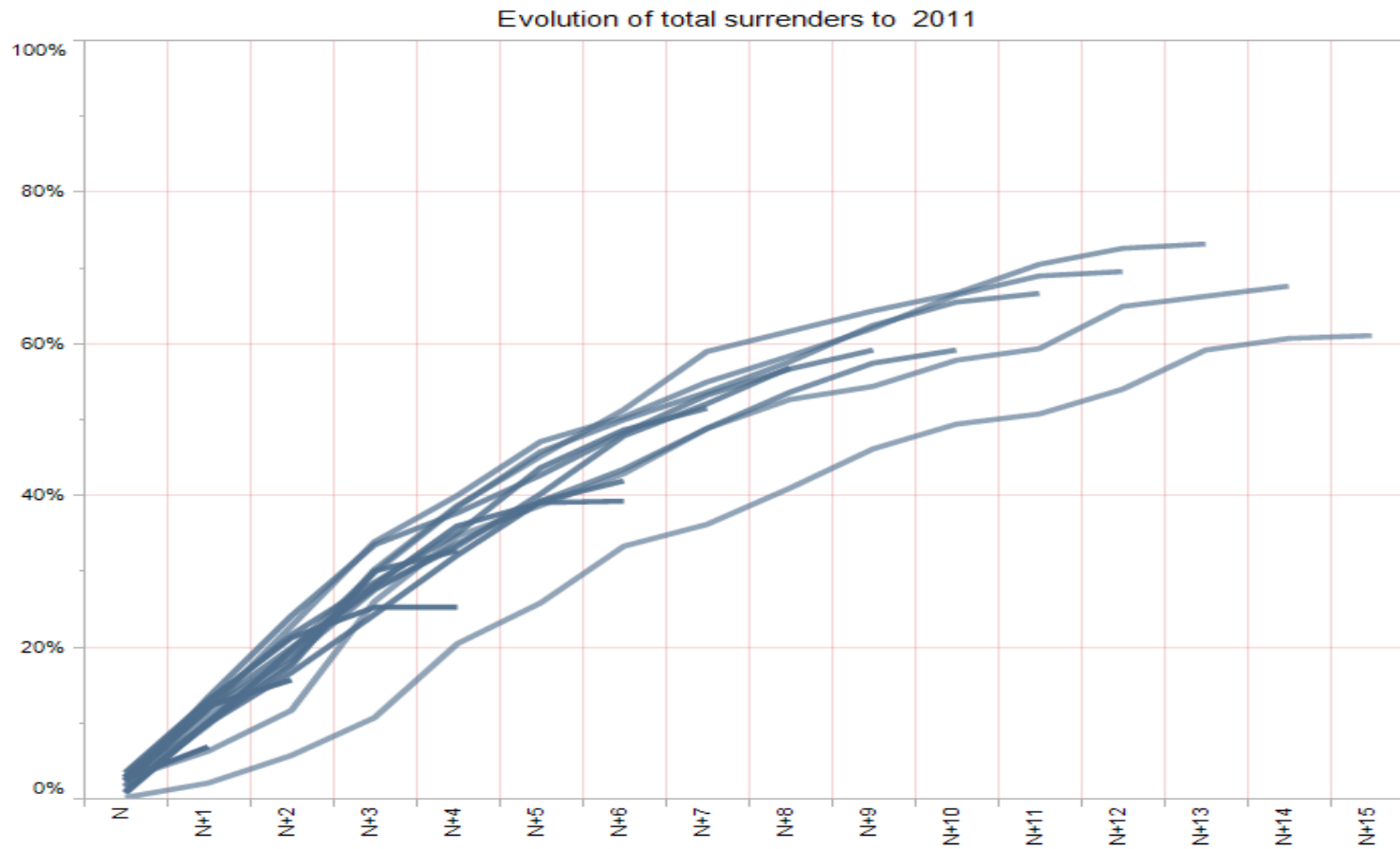
Agriculture: evolution of surrenders



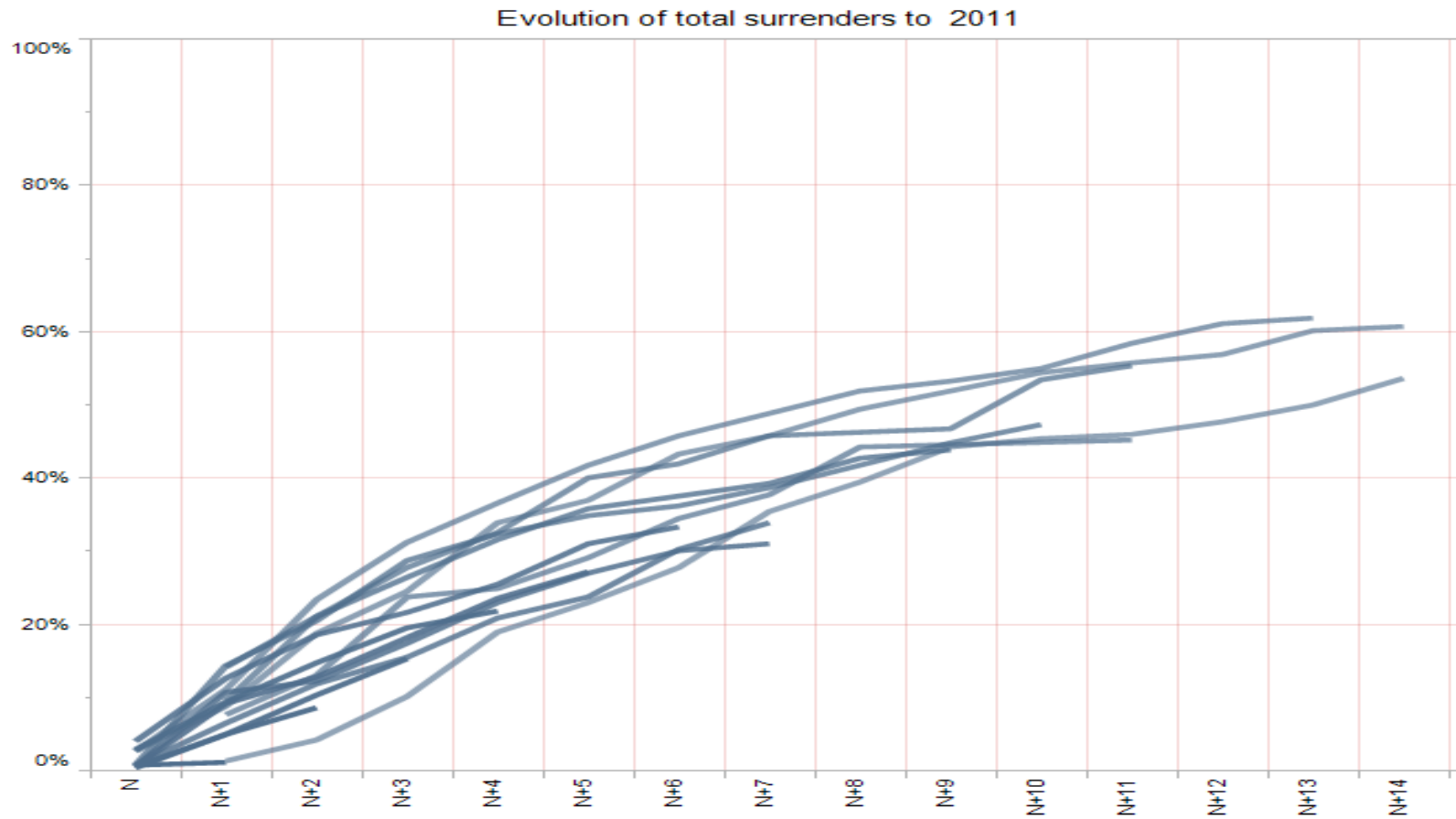
Fruit: evolution of surrenders



Ornamental: evolution of surrenders



Vegetable: evolution of surrenders



Conclusions

- Surrenders consistent within each crop sector
- Fruit has lowest surrenders - 29% of 1996 titles surrendered by 2011
- Agriculture has highest surrenders - 69% of 1996 titles surrendered by 2011



THANK YOU
FOR YOUR ATTENTION

