

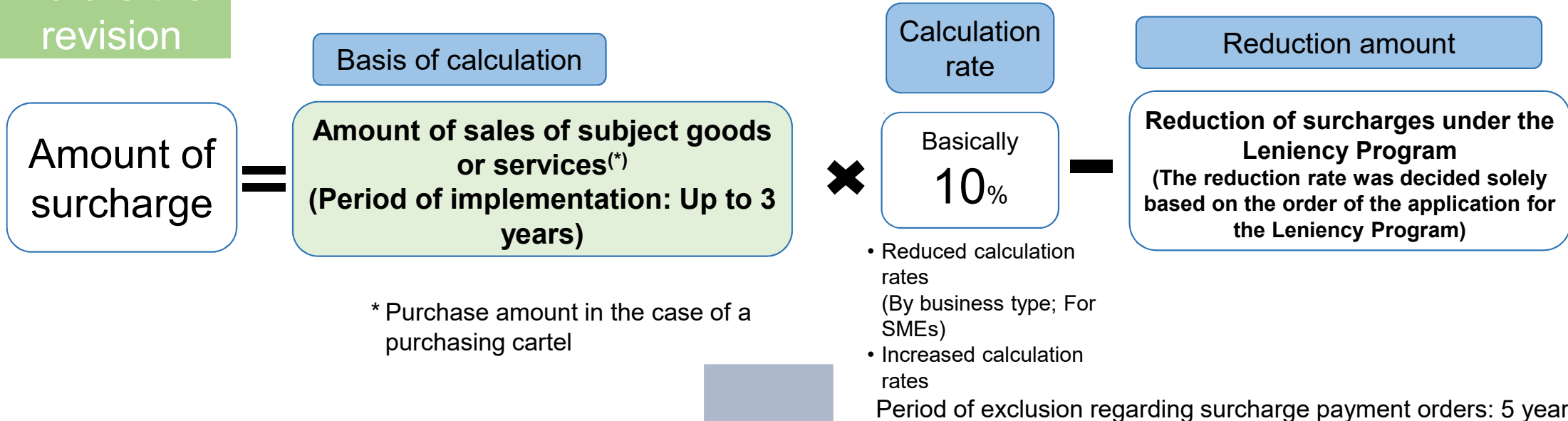


New System under the Amended Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Revision of the Surcharge System)

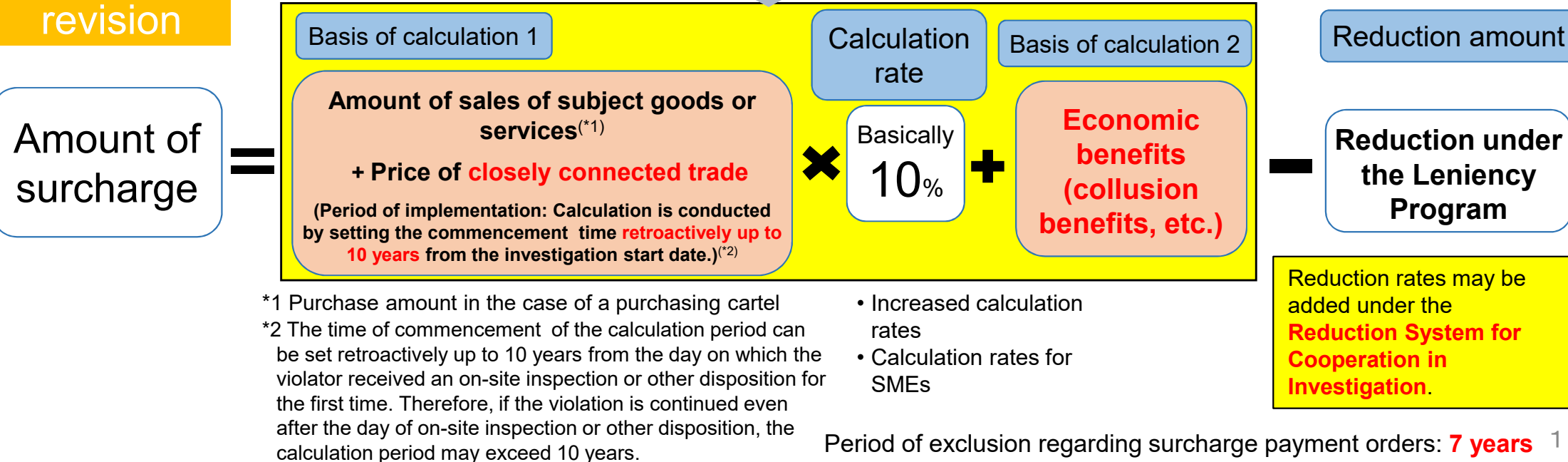
Japan Fair Trade Commission (The JFTC)

Comparison of the Surcharge System Before and After the Latest Revision (Unreasonable Restraint of Trade)

Before the revision



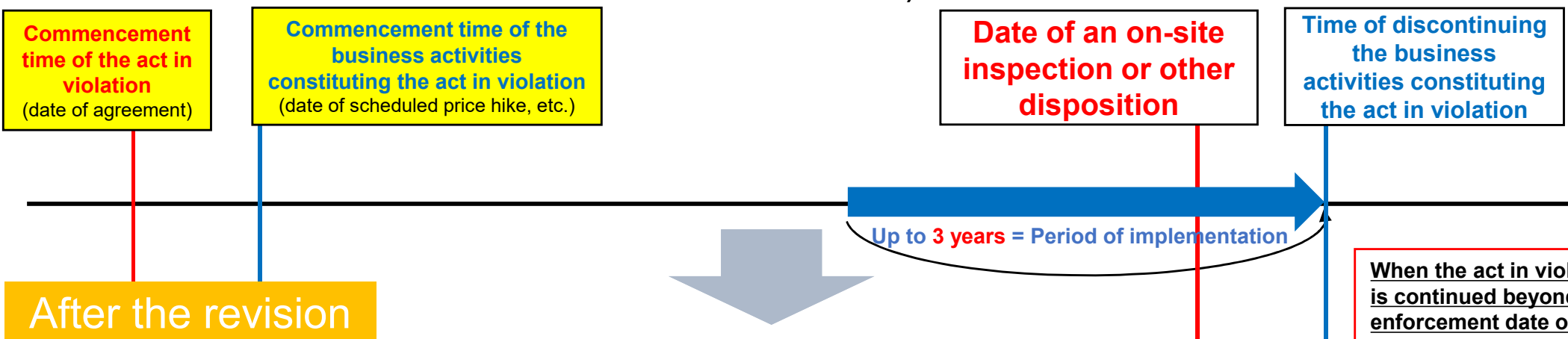
After the revision



Extension of Calculation Period and Development of Estimation Provision

Before the revision

- Period of implementation: Up to 3 years (retroactively up to 3 years from the date on which the enterprise stopped implementing the act in violation in its business activities)

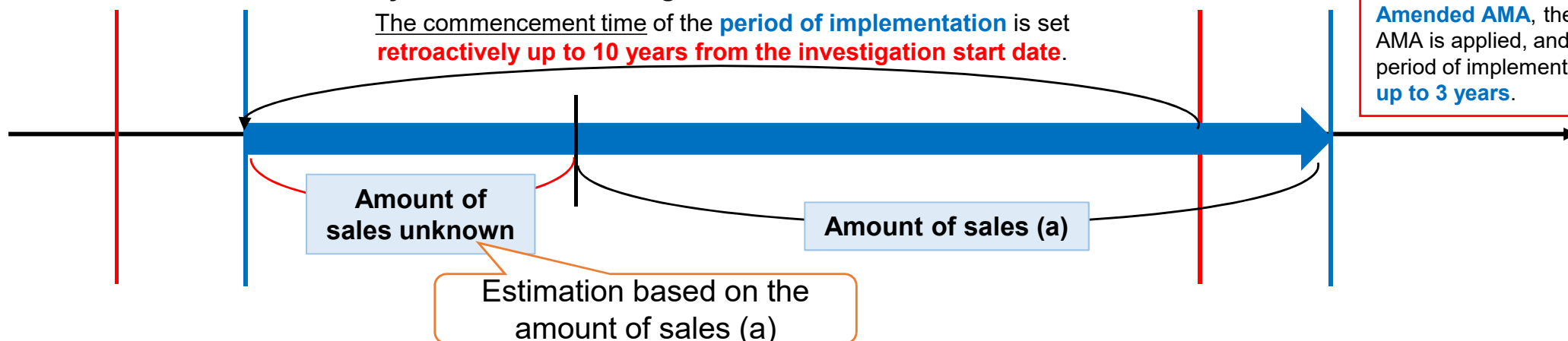


After the revision

- Period of implementation: Calculation is conducted by setting the commencement time retroactively up to 10 years from the investigation start date.

The commencement time of the **period of implementation** is set **retroactively up to 10 years from the investigation start date**.

When the act in violation is continued beyond the enforcement date of the Amended AMA
For the period prior to the enforcement date of the Amended AMA, the former AMA is applied, and the period of implementation is up to 3 years.



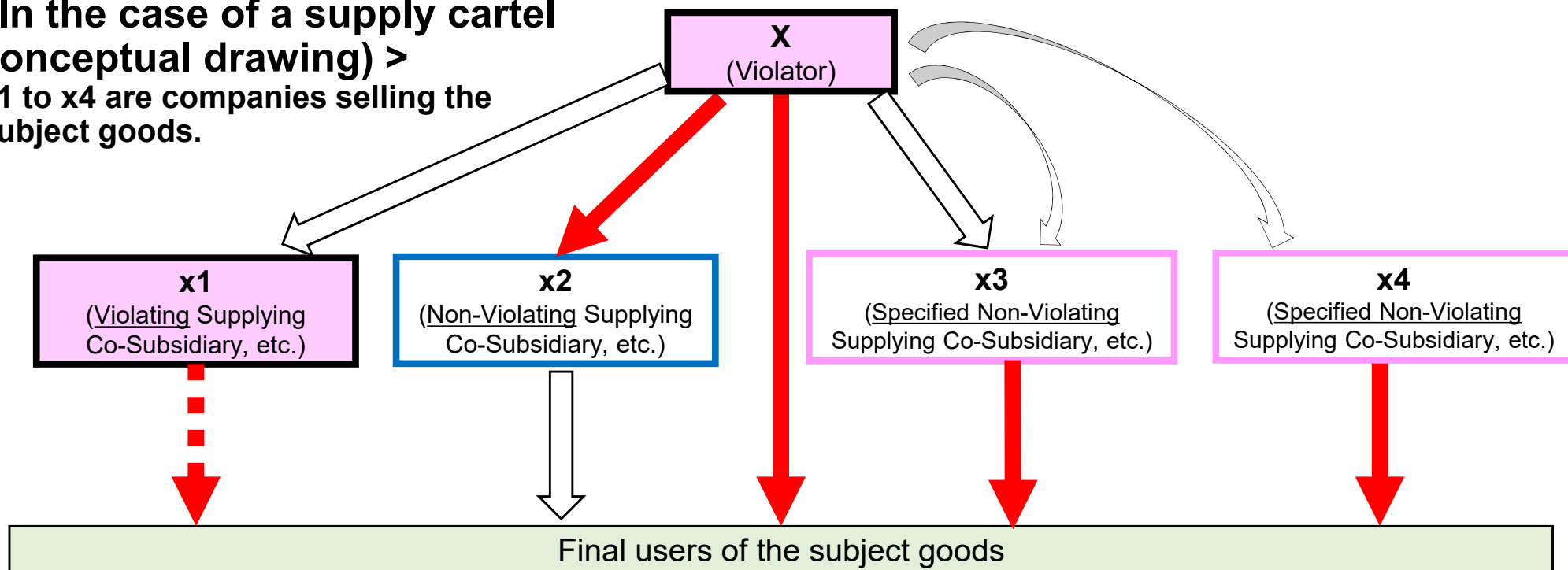
* When there is a period during which the amount of sales is unknown because the enterprise does not report the facts, etc. that serve as the basis of calculation of a surcharge

- The sales amount for the period during which the amount cannot be ascertained is estimated by multiplying the average sales amount per day for the period of implementation of the violator (the period during which the sales amount can be ascertained) by the number of days of the period for estimation (the period during which the sales amount cannot be ascertained).

- Sales amounts (purchase amounts) of certain group enterprises (wholly owned co-subsiary,etc.) that received instructions or information from the violator are included in the basis of calculation

< In the case of a supply cartel (conceptual drawing) >

*x1 to x4 are companies selling the subject goods.



(Note 1) : Transaction that serves as the basis of calculation of the surcharge for Violator X

(Note 2) : Transaction that serves as the basis of calculation of the surcharge for Violating Supplying Co-Subsidiary, etc. x1 not for Violator X

(Note 3) : Transaction that does not serve as the basis of calculation of the surcharge

(Note 4) : Instructions or information in relation to the supply of the subject goods

(Note) Violator

⇒ An enterprise that implemented the act in violation

Specified Non-Violating Supplying Co-Subsidiary, etc.

⇒ A wholly owned co-subsidiary, etc. of the violator that supplies the subject goods (services) and that does not implement the act in violation by itself but received instructions or information from the violator and supplied the subject goods (services) based on such instructions or information

Addition to the Basis of Calculation (ii) (Price of Closely Connected Trade)

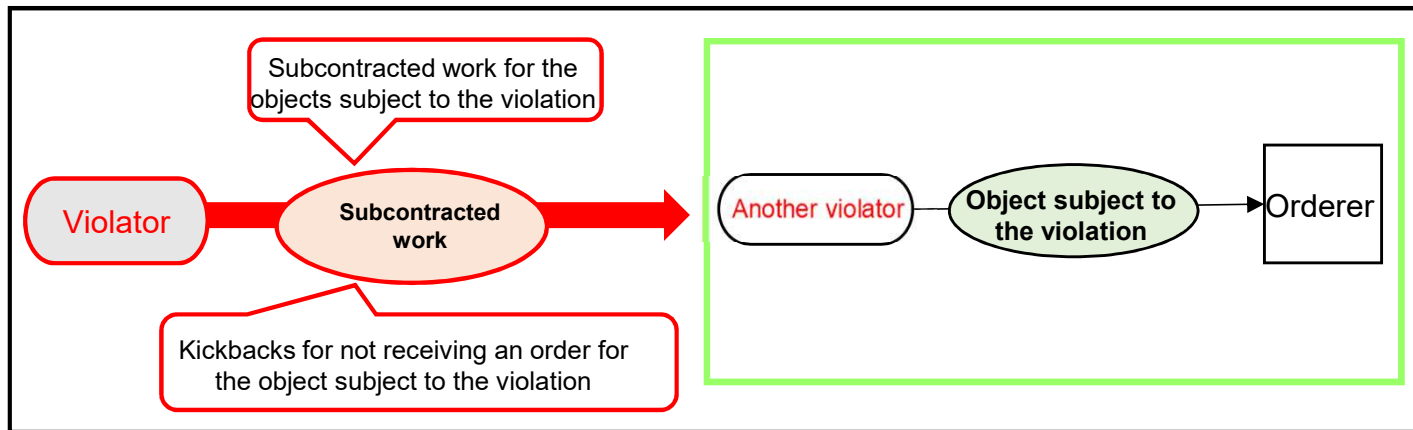
➤ Price of closely connected trade is included in the basis of calculation.

The amount equivalent to the price for the trade that is closely connected to the goods or services connected with the relevant violation such as manufacturing, sales, or management of all or part of the goods or services which, provided by Cabinet Order, which the enterprise and its wholly owned co-subsidary, etc. (limited to the wholly owned subsidiary, etc. that has never committed a violation) conducted

○ **Unreasonable restraint of trade (bid-rigging, cartel)**

- **Closely connected trade:** Trade necessary for supplying the goods or services subject to the act in violation conducted on the condition not to supply the relevant goods or services (manufacture, sale, processing, etc.)

Example



Business wherein a violator conducts subcontracted work for the object subject to the violation as kickbacks for letting another violator receive an order for the object

○ **Private monopolization by control**

- **Closely connected trade:** Trade to provide a person who receives the goods or services subject to the act in violation (users) with information necessary for receiving the provision thereof, and to carry out administration work

Example

Business wherein an enterprise that decided candidate contractors and bidding prices in a public bidding for facility construction carries out agency services for the client as entrusted thereby (assistance for the bidding procedures, etc.)

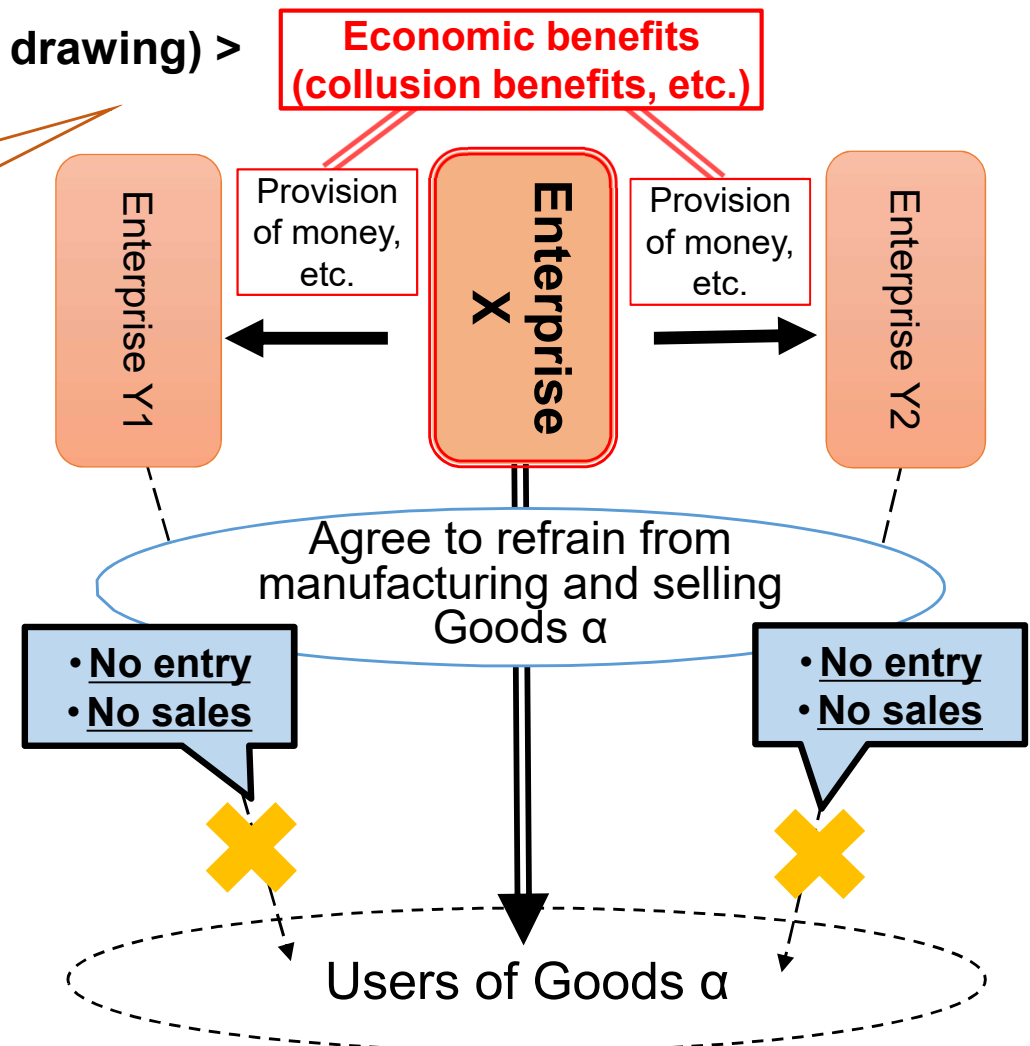
Addition to the Basis of Calculation (iii) (Collusion Benefits, etc.)

➤ Collusion benefits, etc. are included in the basis of calculation.

The amount equivalent to economic benefits such as money which the enterprise and its wholly owned co-subsiary, etc. gained irrespective of its name such as charges and remuneration, with regard to not supplying the goods or services connected with the relevant violation to others or not receiving the goods or services from others

< In the case of a quantity cartel (conceptual drawing) >

Economic benefits from other than sales amounts (**collusion benefits, etc.**) are included in the basis of calculation of a surcharge and 100% of that amount is to be added to the amount of surcharge.

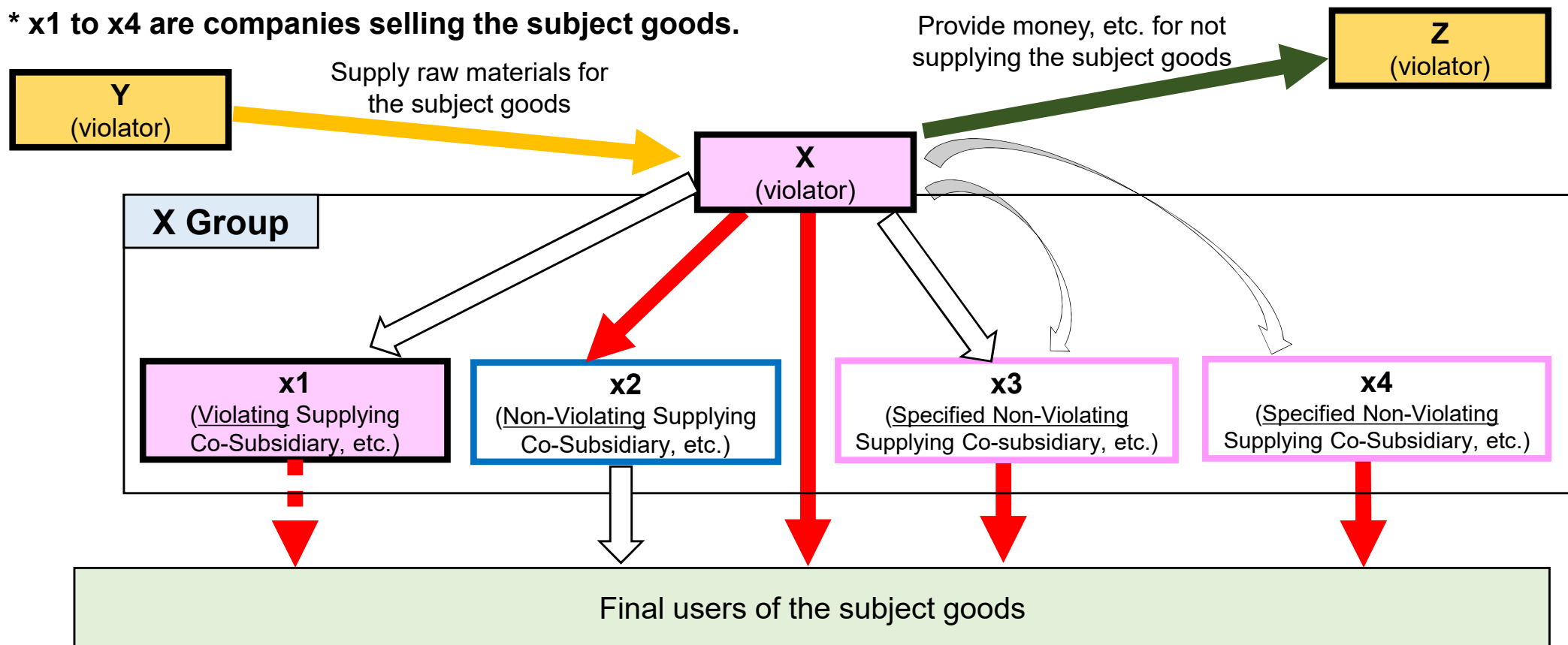


Addition to the Basis of Calculation (Summary)

- Through the latest revision, the following three items were added to the basis of calculation.
- (i) Sales amounts (purchase amounts) of certain group enterprises (wholly owned subsidiaries, etc.) that received instructions or information from the violator
 - (ii) Price of closely connected trade
 - (iii) Amount equivalent to collusion benefits, etc.

< In the case of a supply cartel (conceptual drawing) >

* x1 to x4 are companies selling the subject goods.



(Note 1): Transaction that serves as the basis of calculation of the surcharge for Violator X

(Note 3): Transaction that does not serve as the basis of calculation of the surcharge

(Note 5): Transaction that serves as the basis of calculation of the surcharge for Violator Y (closely connected trade)

* On the condition that Y refrains from supplying the subject goods to X's final users

(Note 2): Transaction that serves as the basis of calculation of the surcharge for Violating Supplying Co-Subsidiary, etc. x1 not for Violator X

(Note 4): Instructions or information in relation to the supply of the subject goods

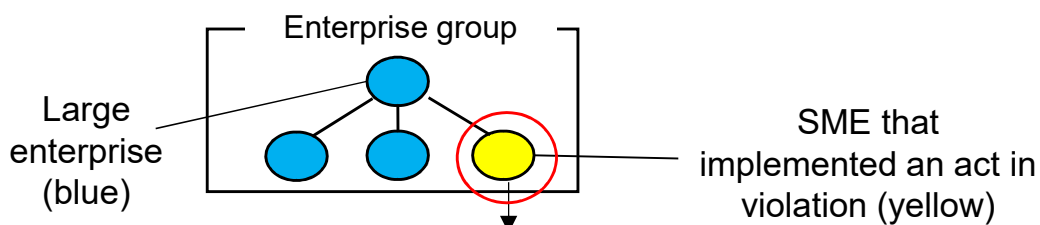
(Note 6): Money, etc. (collusion benefits, etc.) that serve as the basis of calculation of the surcharge for Violator Z

Review of Calculation Rates

- **Calculation rates by business type and reduction rates for early discontinuance → Abolished**
- **Calculation rates for SMEs → Limited the coverage only to substantial SMEs**

Before the revision

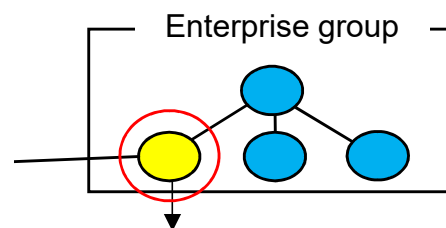
	Manufacturing business, etc.	Wholesale business	Retail business
Basic rates	10%	2%	3%
Rates for SMEs	4%	1%	1.2%



Surcharges for SMEs were also applied to SMEs belonging to a large enterprise group.

After the revision

	All business types
Basic rates	10%
Rates for SMEs	4%



Surcharges for SMEs are not applied if the same enterprise group contains any large enterprise.

Calculation rates by business type

Calculation rates by business type were abolished.

Calculation rates for SMEs

Calculation rates for SMEs are applied only when all enterprises in the same group are SMEs.

➤ **Compiled the coverage of increased calculation rates for repeated violations**

- The increased calculation rate (15%) is applied to repeated violations by an enterprise whose wholly owned subsidiary has received a surcharge payment order, etc. within 10 years from the investigation start date or to repeated violations by an enterprise that merged with another enterprise that has received a surcharge payment order, etc. or that succeeded to the business subject to a surcharge payment order, etc. from another enterprise that has received the relevant order, etc.
- Excluding the case where the second violation (β) was completed at the time of the issuance of a surcharge payment order, etc. for the first violation (α)

➤ **Expanded the coverage of increased calculation rates for enterprises playing a leading role**

- The increased calculation rate (15%) is applied to such enterprises that ask other enterprises to do things as follows and play a significant role in making it easy to implement the act in violation.
 - to conduct an act to conceal or disguise materials relating to the act in violation, etc.; or
 - not to report the facts or submit the materials under the Leniency Program or not to file an application for a conference under the Reduction System for Cooperation in Investigation.